Journal of the Senate

Number 4 **September 13, 1978**

SITTING AS COURT OF IMPEACHMENT

The Senate, sitting as a court for the trial of Articles of Impeachment against the Honorable Samuel S. Smith, Circuit Court Judge of the Third Judicial Circuit of the State of Florida, convened at 2:00 p.m.

The Chief Justice presiding

The original of the following oath of Chief Justice Arthur J. England, Jr., of the Supreme Court of Florida, taken on the 18th day of August, 1978, as successor to Chief Justice Ben F. Overton, was filed with the Senate, viz:

"I solemnly swear that in all things appertaining to the trial of the impeachment of the Honorable Samuel S. Smith, Circuit Judge of the Third Judicial Circuit, now pending, I will do impartial justice according to the Constitution and Laws of the State of Florida; so help me God."

The Managers on the part of the House of Representatives, Honorable William J. Rish, Honorable H. Lee Moffitt and Honorable Ronald R. Richmond, and their counsel, Honorable Marc H. Glick, were present at the Managers' table.

Counsel for the Respondent, Honorable Ronald K. Cacciatore and Honorable Robert H. Nutter, were present at the Respondent's table.

The Secretary called the roll and the following Senators were recorded present:

Senator W. D. Childers—1st District
Senator Tom Tobiassen—2nd District
Senator Dempsey J. Barron—3rd District
Senator Pat Thomas—4th District
Senator Sherrill (Pete) Skinner—5th District
Senator Kenneth H. MacKay, Jr.—6th District
Senator Dan I. Scarborough—7th District
Senator Lew Brantley—8th District
Senator Mattox Hair—9th District
Senator Edgar M. Dunn, Jr.—10th District
Senator Curtis Peterson—12th District
Senator Alan Trask—13th District
Senator Ken Plante—14th District
Senator Bill Gorman—15th District
Senator Lori Wilson—16th District
Senator John W. Vogt—17th District
Senator Don Chamberlin—19th District
Senator David H. McClain—21st District
Senator Guy Spicola—22nd District
(Resignation from the Senate of Senator Betty Castor created a vacancy in the 23rd District)
Senator Tom Gallen—24th District
Senator Warren S. Henderson—25th District
Senator Harry A. Johnston, II—26th District
Senator Philip D. Lewis—27th District
Senator Don C. Childers—28th District
Senator Jon Thomas—30th District
Senator Jim Scott—31st District
Senator D. Robert Graham—33rd District
Senator Jack D. Gordon—35th District
Senator George Firestone—36th District
Senator Kenneth M. Myers—37th District
Senator Ralph R. Poston—38th District
Senator Vernon C. Holloway—39th District
Senator Richard (Dick) Renick—40th District

A quorum present—34.

Excused from duty during the impeachment proceedings: Senators Sayler, Winn and Zinkil; and Senator Williamson until 3:10 p.m., Senator Ware until 2:30 p.m. this day.

Senator Glisson was recorded present at 2:25 p.m.

Prayer by Senator Peterson:

Gracious Heavenly Father, as we approach your throne of grace we ask for your guidance today. We ask for your love and the strength of your love. We ask for the strength of your face and guidance. We are mere humans and have many tasks ahead of us. So if you will be with us all the way and you will strengthen us so that we may do thy will. Forgive us if we fail you and strengthen us again so that we may continue on in the face of any adversity. We ask all of this in thy name. Amen.

The Senate pledged allegiance to the flag of the United States of America.

JUSTICE ENGLAND: Senators, at this time I would remind you that when you first convened you took an oath which appears in Appendix D of the original desk book on your desk. It's not necessary to readminister that oath to you. That oath still pertains in these proceedings. But also at this time I would ask if there is a motion to waive the reading of the journal of the last proceedings of the Senate?

SENATOR HAIR: Justice England, I so move that we waive the reading of the journal of May 26th.

JUSTICE ENGLAND: Thank you, Senator Hair. Any discussion or objections? If not, show the journal reading waived.

Any corrections to the journal? Being none, it stands approved.

I want to call your attention to the notice that you received from your President setting the times for this proceeding, the schedule of hours; that will be the subject of discussion in just a few moments by Senator Hair, but as presently directed the Senate is to convene from day to day from 9:00 to 5:00, the hours that the President set.

As a final preliminary matter, I would like the people who are seated in front of the room, counsel for the Managers, to identify themselves for the record in this proceeding. If you would please get up and give your name so that the reporter can have it properly in the record.

REPRESENTATIVE RISH: I'm William J. Rish, Chairman of the Board of Managers for the house. Also Mr. Marc Glick is Counsel for the Board of Managers.

REPRESENTATIVE RICHMOND: Ronald R. Richmond, Manager for the Florida House of Representatives.

REPRESENTATIVE MOFFITT: Lee Moffitt, House Manager, House of Representatives.

MR. CACCIATORE: Ron Cacciatore, attorney for the Respondent.

MR. NUTTER: Bob Nutter, attorney for the Respondent.

JUSTICE ENGLAND: Thank you, Gentlemen. Senator Plante.

SENATOR PLANTE: Mr. Chief Justice, just a technicality. Senator Ware, I would like to show him excused. He had an accident on the bridge. He was not involved but tied up in the traffic and he missed the airplane and he is on his way from Tampa up here. He is driving. He should be here shortly. I would like for you to show him excused until he gets here.

JUSTICE ENGLAND: Thank you, Senator. At this time the Chair will recognize Senator Hair for a report of the Special Committee on Impeachment Rules.

SENATOR HAIR: Mr. Chief Justice, on the desk of each senator should be a copy of the Special Rules Committee report. And at this time I will read it and then I will give an explanation of the recommendations that we are making.

The Special Committee on Impeachment Rules met on September 13, 1978 to receive a summary of pre-trial progress from the Honorable Arthur J. England, Jr., Chief Justice of the Florida Supreme Court, and to consider the motion for continuance at trial of Samuel S. Smith and other matters.

The Special Committee submits the following recommendations to the Court of Impeachment: One, the full Senate sitting as the Court of Impeachment hear all relevant testimony relating to the motion for continuance and trial date. Two, a new Rule 20 be adopted to read as follows: "At the conclusion of the testimony of any witness, any Senator may put a question to a witness or offer a motion after first having been recognized by the Chief Justice." And three, the Senate accept for its records a duplicate copy of the tape recordings containing conversations of Samuel S. Smith and Robert Leonard recorded on September 10, 1976 and November 16, 1976 as the original tapes were furnished by and are the property of the Federal Bureau of Investigation, respectfully submitted by myself as chairman.

At this time, Mr. Chief Justice, I would like to explain to the members of the Senate the reason for these recommendations. The first recommendation with reference to allowing the full Senate to hear all relevant testimony relating to the motion for continuance, it is our feeling that the Committee could make a recommendation but we felt that the full Senate should hear the testimony that we heard and that the full Senate was ultimately going to have to make the final decision. And on that basis we have asked the doctors to appear here and have the medical testimony so that you have an opportunity to hear it and you can ask questions of the doctors who are appearing.

With reference to the second recommendation, in the original rules that were adopted by the Committee, we had provided that if a Senator wished to put a question to a witness the question had to be reduced to writing and put by the Chief Justice. We felt that that might be unfair and that this would be fairer because now under this amended rule at the conclusion of the testimony of any witness any Senator may put a question to a witness or offer a motion after first having been recognized by the Chief Justice.

With reference to the third recommendation, the attorneys for the parties have stipulated and agreed that a copy of a tape may be introduced in evidence. There was no objection to that. We just wanted to have it in the record. And the parties have agreed to it. There is no objection by either of the parties involved. So on the basis of that, Mr. Chief Justice, at this time I would like to move that we do now accept the Committee report.

JUSTICE ENGLAND: You heard the report of the chairman of your special committee. Is there any discussion?

(No response.)

JUSTICE ENGLAND: Seeing no discussion, call for a vote. All those in favor of adoption of the Report signify by saying aye.

THE FLOOR: Aye.

JUSTICE ENGLAND: All opposed?

(No response.)

JUSTICE ENGLAND: The Report is unanimously adopted. At this time it becomes appropriate to consider, as your Special Committee has recommended, all relevant testimony relating to the motion for continuance. Mr. Cacciatore, for the respondent, you may proceed.

MR. CACCIATORE: Mr. Chief Justice, at this time Mr. Nutter will present one witness on behalf of the respondent.

MR. NUTTER: Mr. Chief Justice, we call Dr. Landrum. I believe he is in the witness room.

JUSTICE ENGLAND: Dr. Landrum will be called to the stand.

Senators, let me take this occasion to reiterate what my predecessor Chief Justice Overton had mentioned to you before. You are when you sit as the Court of Impeachment very much as a jury. You are aware that jurors are not free to leave their places, leave the chambers, and miss portions of the testimony. I know that is a hardship. Certainly, you can move around but I would ask as he asked that you remain as much as possible in your seats. Certainly remain in the chambers and that your attention be on the testimony that is being presented. This is a matter of as great importance as any that you consider as Senators of the state. Thank you.

WHEREUPON,

DR. L. G. LANDRUM

was called as a witness, having been first duly sworn, was examined and testified as follows:

JUSTICE ENGLAND: Just a moment, Dr. Landrum. Senator Hair?

SENATOR HAIR: Mr. Chief Justice, the Senators do not have a copy of this motion in their folders but I am asking the secretary to xerox copies of the motion for continuance with affidavits which are attached to it. So you will be getting it in just a few minutes.

JUSTICE ENGLAND: Mr. Nutter?

DIRECT EXAMINATION

BY MR. NUTTER:

Q. Mr. Chief Justice, members of the Senate, Dr. Landrum, would you state your name, please, sir, and your occupation.

A. Louie Grady Landrum. I am a physician and surgeon, M.D., Lake City, Florida.

Q. Dr. Landrum, how long have you been a licensed physician in the State of Florida?

A. Since 1947.

Q. Would you give us a background of your education?

A. I went to Auburn University for my premedical training. And I had two years at the University of Alabama when it was a two year med school. And I had my last two years at L.S.U. in New Orleans Medical School. And then following that I had a year's internship at Charity Hospital in New Orleans and served a two year tour of duty as a flight surgeon in the navy.

Q. Dr. Landrum, you are in private practice of medicine at the present time?

A. Yes, sir.

Q. What type of cases do you handle? Do you specialize in anything particular?

A. Family practice, medicine, I do some surgery. I do industrial medicine and just a general run of the mill. And I am Chief of Staff of Medicine at Lake Shore Hospital and Chief of the coronary care unit.

Q. You are Chief of the coronary care unit at Lake City Hospital?

A. Yes, sir.

Q. How long have you done that, sir?

A. The last four or five years we usually rotate it around. It's been somewhat of a chore so we kind of swap between two or three of us.

Q. Dr. Landrum, with respect to your duties as Chief of the coronary care unit, what do you particularly do?

A. Well, I treat heart patients, of course, and being in charge of the coronary care unit, from time to time the unit will be full and the patient will have to be moved out, for example, and then I will have to make a decision who is the sickest and what not.

Q. In your practice in diagnosing the patients that have coronary disease, do you continue to treat them yourself or do you refer them to other cardiologists?

A. Oh, yes, I treat the vast majority of them. From time to time I will refer them to a cardiologist for further evaluation and follow-through.

Q. With respect to the coronary cases that you have at the Lake City Hospital, how many of those cases do you personally handle?

A. Probably directly fifty percent and indirectly or involved in another thirty percent.

Q. Dr. Landrum, are you the doctor that treats Sam Smith? Have you been treating him for a while?

A. Yes, sir.

Q. How long has he been a patient of yours?

A. Around 1960 I think is when—or '59—I have been treating his family and him.

Q. Did you treat him for any particular episode dealing with his heart?

A. Yes, sir.

Q. When was the first occasion you had to do that?

A. May I use my records?

Q. Yes, sir, if you will, please. Hopefully you have your records there. You may refer to them when you need to.

A. On August the 16th—

Q. Dr. Landrum, before you go into that let me ask you, the records that you have, that you brought with you here, are these records that you keep in your business, that you make in your ordinary course of your business?

A. Yes, sir. This is a copy of the hospital records for hospital admission and a duplicate of that is sent to my office after the patient has been discharged.

Q. These records may contain correspondence or information that you have acquired from other doctors but you keep them in your business records that you keep in your office, is that correct?

A. That is correct.

Q. Now with respect to the first time you had occasion to treat Sam Smith for coronary disease, if you will, sir, please give us the date when that occurred?

A. This was August the 16th, 1973. And he was treated by or admitted by another physician, my associate, Dr. Weiffenbach in my absence. And he had visited him at his home because of chest pain. He made a house call on him. And he thought he was having a heart attack and he called the rescue ambulance and rode with the ambulance to the hospital. Do you want me to go ahead with a narrative?

Q. Yes, sir, if you will. I just want to get the facts out and the symptoms that existed at that time.

A. In transit to the hospital Dr. Weiffenbach observed that Judge Smith stopped breathing. He had no heartbeat and was literally dead. And he thought he had a cardiac arrest and he had to resuscitate him in to the hospital.

Q. Did you then see him as a result of this episode?

A. Yes, I saw him later, probably the next day.

Q. What were your findings when you saw him again?

A. Well, he did not have any definite electrocardiographic changes or anything that would be called an acute insult in my opinion. He did have some recurrence of pain but not very much. He was weak, had some elevation of his blood pressure. So I felt that he more or less had a cardiac arrest and probably had some myocardial ischemia which was a loss or a diminished blood supply to his heart muscle.

Q. Dr. Landrum, Dr. Weiffenbach was your associate at that time?

A. That's correct.

Q. Your records contain there what you have read to us facts that he noted on the ride from Sam Smith's home to the hospital, is that right?

A. Yes, sir. That is in the discharge summary.

Q. The cardiac arrest that was evident at that time, is that an indication of heart disease?

A. Very definitely because a person is literally dead.

Q. Now did you prescribe medication to Sam Smith as a result of this incident in 1973?

A. Yes. He was kept in the coronary care unit from the date of admission, 8/16/73 until 8/19/73, a total of three days, and maintained on oxygen, IV's, and was given pain medication from time to time and nitroglycerin and Valium or Dyazide and he had a sleeping medication, Dalmane.

Q. Dr. Landrum, I realize that this is perhaps repetitious from your testimony this morning but would you explain what those different drugs are, the Demerol and the nitroglycerin?

A. The Demerol is a narcotic that's used for pain. The Valium is a muscle relaxant which reduces the amount of narcotic that is needed in pain and it also is a tranquilizer. Nitroglycerin is a vasodilator as we call it. It dilates the blood vessels.

Q. Dr. Landrum, why would you have prescribed the nitroglycerin for Sam Smith at that time?

A. I use that quite often in chest pain because it does relieve the pain sometimes and we don't have to use narcotics as much.

Q. Did the use of nitroglycerin relieve the pain for Sam Smith during that period of time?

A. I don't have it written down here but as I recall at times it did and at times it didn't.

Q. This particular pain would be caused by what?

A. Well, it's presumable that it would be angina type pain or the myocardia ischemia.

Q. Which means what, Doctor, if you will?

A. Which means, as I said earlier, it's a diminished blood flow or diminished oxygen or nourishment to the heart muscle itself.

Q. Doctor, are you acquainted with and do you know an individual by the name of Dr. Lamar Crevasse?

A. Yes, sir.

Q. Who is he?

A. Dr. Crevasse is a cardiologist at Shands Teaching Hospital and at the Florida University Medical School. He is on the staff. He also is a practicing cardiologist and he is in charge of the educational program for postgraduate doctors for the State of Florida.

Q. Would you consider Dr. Crevasse an expert in the field of cardiology?

A. Very definitely.

Q. Now with respect to Sam Smith, did you have occasion to consult with Dr. Crevasse about his coronary accident that occurred in August of 1973?

A. Yes, sir.

Q. Would you relate to us what your communication with Dr. Crevasse was or, specifically, did you send Sam Smith to see Dr. Crevasse?

A. I did. And I called him and, of course, I sent copies of all of these records that I had on him from his hospital admission. And Dr. Crevasse felt that he definitely did have coronary artery disease.

Q. Dr. Landrum, are you reading from your records and your notes with respect to what Dr. Crevasse told you or related to you at that time?

A. I am not reading at the present time but I am quoting from memory. And I do have it somewhere in my records and I think you have it also.

Q. All right. Dr. Landrum, if you will—

A. But I do have a report from him.

Q. All right. If you will, refer in your report, which is contained in your records there, what did Dr. Crevasse say with respect to the coronary disease of Sam Smith in 1973?

(Witness examines document.)

A. This is a report dated October the 5th, 1973. In essence, his most severe chest pain occurred on August the 16th, 1973 — he's relating the history back to me — followed by a cardiac arrest, as your records indicated.

During his one-week hospitalization his cardiogram did show lateral ischemia and it's interesting that on the fourth hospital day he had slight rise in his CPA and SGOT, these are blood enzyme studies which indicate muscle damage.

Q. Now is that an indication of a cardiovascular problem, Doctor, the rise in those enzymes?

A. Quite often there is a guideline along with the EKG and other things to confirm if there is muscle damage or myocardial infarction, even though I did not think at the time he had one.

Q. Now, did Dr. Crevasse in his correspondence with you indicate to you that he felt that Sam Smith had suffered a myocardial infarction?

A. I will read it to you, the last paragraph of his report:

"I also feel that he should have coronary angiography as soon as this can be arranged. But probably not sooner than two weeks from now since he is now approximately only six weeks after infarction."

That would indicate that Dr. Crevasse felt that he really did have myocardial infarction at that time.

Q. Now, Dr. Landrum, you were acquainted with Dr. Crevasse and you have consulted with him with respect to Sam Smith. Have you had occasion to consult with Dr. Crevasse about other patients that you had diagnosed for coronary disease?

A. Yes, I'm sure I have. I don't recall any names of patients right offhand but the University of Florida has a computer EKG system that we use in our hospital and Dr. Crevasse is in charge of that computer system. And from time to time I will call about a patient.

Q. Now, Dr. Landrum, with respect to your diagnosis of cardiac patients, you had referred other patients to Dr. Crevasse in the past?

A. Yes.

Q. Had you conferred with respect to your diagnosis on these other things?

A. I didn't follow you.

Q. All right. You had conferred with Dr. Crevasse on other patients other than Sam Smith?

A. Yes, sir.

Q. And these are patients that you had diagnosed as having cardiovascular disease?

A. Right.

Q. Had Dr. Crevasse, when he looked at these patients, had he concurred with your diagnosis on those things?

A. I think so in most instances. I don't recall any disagreements.

Q. All right. Now did you have occasion to treat Sam Smith for a subsequent cardiovascular incident after August of 1973?

A. Yes, sir. In 1974—

(Witness examines documents.)

Q. Doctor, before going to that, let me back up a minute. I'm getting ahead of myself a bit.

What did Dr. Crevasse recommend as a diagnostic treatment or a method of treatment with respect to Sam Smith back in '73?

A. He recommended that he have a heart catheterization and angiography; this is where you inject a dye that actually demonstrates all of the coronary arteries, whether you have any arteries that are stopped up or occluded and also demonstrates the function of the valves in the chambers of the heart.

Q. Now the purpose for such a diagnostic aid would be to determine if some form of other treatment would be necessary other than medication?

A. Yes. To determine the amount of damage to the artery—I mean to the heart and to determine any arteries that are stopped up or occluded and too, whether or not a coronary by-pass, surgery, would be beneficial.

Q. Dr. Landrum, are you acquainted with the Cleveland Clinic, sir?

A. Yes, sir.

Q. To your knowledge, did Sam Smith have an angiogram performed on him?

A. He did.

Q. Do you have any records and indication of when and where that was done, sir?

A. Yes, sir. Just a moment.

(Witness examines documents.)

A. I have some correspondence from the Cleveland Clinic that was directed to Dr. Crevasse and that's dated October 29th, 1973.

Q. All right. Now in that report from the Cleveland Clinic, Dr. Landrum, there are several recommendations that are indicated there for Sam Smith; is that correct, sir?

A. Yes, sir.

Q. Apparently there is an indication here that at this time it would be—not be necessary for a bypass operation. Would it be fair to say that that's pretty much what the result of that—

A. Yes. They found some defective coronary arteries but they did not feel at that time that a coronary bypass or surgery was indicated.

Q. Would it also be a fair statement of the totality of this report that it does indicate that he had a narrowing of coronary arteries and therefore a decreased flow of blood to that heart muscle?

A. Yes, sir.

Q. Now, Dr. Landrum, you knew Sam Smith as a patient and did you know him other than as a patient?

A. Yes. I knew him as a friend socially. I played golf with him on rare occasions.

Q. All right. Now there is an indication in this report from the Cleveland Clinic with respect to some suggestions to Sam Smith and one of them is for him to reduce the intake of alcohol. Would that be a suggestion that a cardiovascular doctor would make to a patient who may imbibe in alcoholic beverages?

A. If it was excessive, sure, and also in order to reduce weight because he was slightly overweight at the time and it was felt that he should reduce his food intake or calories. Try to lose some weight.

Q. Were you aware of any situation where since you did know Sam Smith socially that he used alcohol to excess?

A. Not to excess, not to my knowledge, sir.

Q. Now with respect to one of the statements in this report they indicate that he should try to avoid stress at work; is that also indicated in there?

A. Yes, sir.

Q. This report, of course, states that Judge Smith and his wife were delighted with the findings and I assume that this relates to the fact that he did not have to have this bypass operation or it wasn't indicated at that time?

A. I think that was the meaning of that statement because Dr. Lamar Crevasse had told Judge Smith that he felt sure that if they would do surgery on him that they would find two or three major vessels and probably that he would need a bypass. And so they decided differently and so he was somewhat pleased at that statement at that time.

Q. Now with respect, again, to Dr. Crevasse's report to you upon his examination of Sam Smith in 1973, he did feel that he had suffered at one time a myocardial infarction; is that correct?

A. Yes. This is, again, reading from the correspondence from Dr. Crevasse dated October the 5th, 1973 to Dr. Weiffenbach who had seen him first and referred him.

I repeat: "Since he is now approximately only six weeks after infarction . . ." So he used the word "infarction" there and he was of course referring to his future angiography.

Q. Dr. Landrum, after 1973 did you have occasion to treat Sam Smith for coronary problems?

A. In 1974 he came in from playing golf, I think it was — let me find it —

(Witness examines document.)

A. And he had developed chest pain at home and called the rescue unit and they brought him in to the hospital and the EMT, the Emergency Medical Technician, on the ambulance stated that he arrested on them at that time and they had to bring him back to resuscitate him. And I think he was —

Q. Was that information contained in your report, Doctor, from 1974?

A. I was looking for that but I'm not sure that it was in the—

(Witness examines documents.)

A. Yes. They started a CPR, cardio pulmonary resuscitation, immediately on arrival in the emergency room of Lakeshore Hospital and a code 99 was called, this is what we call at our hospital when you have an arrest or something like that and then you have a team that responds immediately, doctors and nurses.

Q. Dr. Landrum, had you during your period of treatment for Sam Smith had occasion to run electrocardiograms on him?

A. Yes, sir, many times.

Q. All right. Now I believe your records indicate that you have electrocardiograms from 1964 on up to the present date; is that right, sir?

A. Yes, sir.

Q. Were those electrocardiograms made available that you had to Dr. Crevasse when he saw Sam Smith in 1973?

A. Yes, sir. I'm sure I sent them; I always send copies of all the material that I have that's pertinent.

Q. With respect to Dr. Crevasse's assessment of Sam Smith's condition, did he refer to those electrocardiograms, to your knowledge?

A. I beg your pardon?

Q. With respect to Dr. Crevasse's assessments of Sam Smith's condition, did he refer to those electrocardiograms, if you know?

A. Did he refer them?

Q. Did he refer to them?

A. Oh, yes. Yes, he reviewed all of them.

Q. All right. In 1974, then, when this other incident occurred, what form of treatment did you prescribe for Sam Smith?

A. I put him on rest; I only kept him in the hospital a couple of days because he was fine, came out of it fine and so I let him go home and of course I kept him on his medication for his high blood pressure and for his coronary—the same medication that he had been on before.

Q. Did you send him or did he go back to Dr. Crevasse?

A. He went back to Dr. Crevasse again a few days after that.

Q. Now what, if anything, do your records reflect that Dr. Crevasse advised Sam Smith to do then?

A. I can't put my finger on the records right now but as I recall, he advised him to retire from that type work and that if he couldn't retire, certainly to cut down on his case load or something.

Q. All right. Now, Dr. Landrum, did you continue to follow and treat Sam Smith as a patient on up to the present time?

A. Yes, sir. I saw him from time to time along with Dr. Crevasse.

Q. All right. Were you continuing to keep him on the nitroglycerin and other medication for his heart problems?

A. Yes. For a period of time there he got along pretty good and then along about '66, I think it was, and he was seen from time to time but not as frequent as before.

Q. Now he had an incident in 1976; is that correct?

A. In '75.

(Witness examines document.)

A. He was admitted to the hospital in September of '75, September the 4th of '75.

Q. What were the symptoms of the admission at that time?

A. He was admitted with chest pain, ruled out myocardial infarction and he had no changes in his electrocardiograms and he was also having some pain in his neck, kind of a stiff neck-like thing and so he had a few PVCs or premature ventricular contractions which, that was during the night, which cleared up rapidly. But I felt that on this admission that it was probably more muscular skeletal; in other words, neck pain and chest wall pain and not due to the heart at that time.

Q. So you diagnosed that incident differently than you had the previous incidents?

A. Yes, sir.

Q. There were observable signs that you could see that would indicate to you that there was a difference in those three incidents?

A. Yes, sir.

Q. All right. Now when is the next time that you're aware that he had any cardiovascular difficulty?

A. As far as a severe episode or hospitalization, that was when he was out in New Orleans.

Q. All right. Now did you have occasion to correspond with the doctor that treated him in New Orleans?

A. Yes, sir.

Q. Is that Dr. John Patterson?

A. That is correct, Dr. John Patterson.

Q. Did you talk with him over the phone and correspond with him through the mail with respect to Sam Smith's condition?

A. Yes. He called me several days prior to Judge Smith being released from the hospital and gave me his finding and so forth and said he would mail me copies of his report and said that he felt that he had had some severe ischemia and that he recommended that he be—

REPRESENTATIVE RISH: Excuse me, Your Honor. Just a second, Doctor.

Is he testifying from the records that he has got in front of him now or his recollection of the conversation that he had with somebody else? I just want to object to the hearsay. We have not had a chance to cross examine that other doctor. Is that from his records?

MR. NUTTER: Yes, sir. I prefaced my question with respect to whether he had correspondence with the doctor.

BY MR. NUTTER:

Q. I assume that you're testifying, Dr. Landrum, from your records?

A. No. I was asked, I thought, if I had a telephone conversation.

Q. All right.

A. This is what I was—

Q. My question was did you have telephone conversations and/or correspondence with him?

A. I had both.

Q. With respect to what you have in your file that Dr. Patterson sent to you, would you relate your comments only to those documents?

A. Dr. Patterson's admission diagnosis or impression was angina pectoris with probable myocardial infarction and mild hypertension by history.

His discharge diagnosis or his final diagnosis after he left was arteriosclerotic heart disease with angina pectoris, unstable angina pectoris, coronary artery disease with anterior and inferior infarction and mild hypertension.

Q. Now, Dr. Landrum, it appears then that Dr. Patterson's diagnosis concurs with Dr. Crevasse's diagnosis with respect to the myocardial infarction.

A. Yes, sir.

Q. All right. Do you have attached to that correspondence, Doctor, the electrocardiograph reports that were made when Sam Smith was hospitalized in the East Jefferson General Hospital in June of 1978?

A. Yes, sir. There are four copies or four different electrocardiogram copies.

Q. Is there a diagnosis containing, on the electrocardiogram, copies that you have, Doctor, in your file there?

A. Is there what?

Q. Is there a diagnosis, interpretation, if you will, if the—

A. There is an interpretation by a different cardiologist, apparently he is the one who reads and interprets the EKGs officially for the hospital. There are two different cardiologists who interpret it. One is a Dr. J. P. Bower, B-O-W-E-R, M.D. He interpreted two of them — no, three of them. The other one was interpreted by Dr. A. C. Quiroz, Q-U-I-R-O-Z. Dr. Quiroz's diagnosis or interpretation is intraventricular block to heal anterior and posterior infarction and no significant change since the previous tracing on 6/22/78.

Q. All right. Now, Dr. Landrum, these records were sent to you for you to be able to keep up with the medical history of Sam Smith; is that correct?

A. That is correct.

Q. All right. And with respect to the interpretation of the cardiograms by the other doctor, what was his finding?

A. The other doctor, Dr. Bower, the initial EKG said he had a left anterior hemoblock and inferior wall, ST segment depression, cannot exclude myocardio ischemia.

Q. Now, Doctor, would it appear that the diagnoses that have been made then by Dr. Patterson and the other cardiologist in interpreting the cardiograms would concur with what Dr. Crevasse found in '73 and '74?

A. In essence almost the same diagnosis.

Q. All right. Now I noted that there was another term that Dr. Patterson had used with respect to his discharge diagnosis. On 6/24/78 he relates this to the unstable angina pectoris; would you explain that for us, Dr. Landrum?

A. Who made that statement, sir?

Q. Dr. Patterson in his letter to you.

A. I wanted to be sure that I had the right one.

Q. Where he sent his report dated June the 30th, 1978 and on his discharge summary on Page 1 at the top he includes the term "unstable angina pectoris".

A. Unstable angina pectoris is chest pain or a person who has angina that is not responding to treatment, to medications as it should and being unstable they are more or less subject to further complications, subject to a myocardial infarction or other type heart complications.

Q. All right. Specifically, Dr. Landrum, is it an indication of a deteriorating cardiovascular disease?

A. It's an indication of the myocardium or heart muscle not getting sufficient blood supply to it. And if it continues on and on, why, of course, the heart will deteriorate.

Q. All right. Now I believe that initially back in '73 and '74 you and Dr. Crevasse had determined that Sam Smith was suffering from angina. Is the term "unstable angina pectoris" a further deterioration from just the general term angina?

A. Well, if it's unstable, yes, sure.

Q. All right. And can you give us just in layman's terms what would you mean by unstable, how would it become unstable?

A. Well, you can't stabilize it, you can't stop the pain and the pain continues and the lack of blood supply and oxygen and nourishment to the heart muscle is impaired. So the heart muscle is going to suffer from it and it is going to deteriorate.

Q. So in June of 1978 this is a finding that Dr. Patterson had out in New Orleans?

A. Yes, sir.

Q. Let me ask you this now; as recently as August of 1978 have you seen Sam Smith with respect to a continued heart problem?

A. Yes, sir.

Q. What were his symptoms at that time?

(Witness examines document.)

A. On the 11th of August '78 he was having—he came up to the office for blood pressure and so forth and he was still having some angina and therefore I increased his Inderal, I-N-D-E-R-A-L, which is a medication that's used in angina as well as for blood pressure and other conditions. And his blood pressure at that time was 130 over 100 which is slightly higher on the bottom side.

Then on the 22nd of August he telephoned me and said that he was still having pain, he was having pain at night, it would wake him up and he had pain if he walked from one end of the house to the other and he had recalled that in New Orleans they had applied a nitroglycerin ointment or paste to his skin, to his chest, and requested that so I gave him some of that to see if it would relieve his angina.

Q. Doctor, what was the significance to you of him complaining of having chest pain at rest or at night or upon slight exertion?

A. Still the same problem, unstable angina.

Q. All right. Then this condition, as far as you were concerned at that point still existed?

A. Yes, sir.

Q. Now with respect to that condition, did you consult, again, with Dr. Crevasse?

A. I do not have in my notes—I think I told Judge Smith that he should go back and see Dr. Crevasse, make an appointment himself because he knew him well enough to call him.

Q. Are you aware that he did that?

A. Yes. But I am not sure that I have it documented in writing here.

Q. All right. Now, Dr. Landrum, with respect to the unstable angina that existed in the latter part of August of '78, did you recommend to Sam Smith that he not do anything to expose himself to stress or to exert himself?

A. Yes, sir. I told him that he should try to get all the rest he could and not to do anything strenuous, physically or mentally.

Q. All right. Is the history of Sam Smith with respect to the time you first treated him in 1973 up to the present time consistent with a deteriorating cardiovascular disease and problem?

A. Yes, I would think so.

Q. Do you have or would you consider the fact that he had cardiac arrest on two separate occasions, hard data indicating that he did have coronary disease?

A. Yes. Based on all of the medical records up to date, yes, sir.

Q. All right. Would it be your opinion, Doctor, that—or your recommendation to him that he should not participate in the impeachment proceedings before the Senate?

A. Yes, I recommended that to him.

Q. All right. For what reason, Doctor, why should he not testify?

A. Because of his unstable angina and because of his subjection or possibility of what we call a sudden death syndrome like he had on two other occasions and the stress and strain that he has already gone through and this coming on the heels of that and I think it would, in my opinion, based on all of the records that I have, everything I know about him, I would feel that it would be detrimental.

Q. Do you feel that he would run the risk and the high risk of having a cardiovascular accident should he participate?

A. In view of his past history and present illness, very definitely.

Q. With respect to diagnostic aids in determining what a person's apparent heart condition is on a given day, is an electrocardiogram significant if it shows no abnormalities for a particular person on a particular day?

A. It's not because it's always significant but if it does not show any findings or an acute insult or what not, that still doesn't necessarily mean that a person has a normal heart, no.

Q. In other words, what I understand you to say is a person could have what you would call a normal EKG and yet possibly have coronary heart disease?

A. That is correct.

Q. Now with respect to a treadmill or a stress test, would giving somebody a stress test on any particular day where the results of that test appear to be normal, would that be conclusive that the person did not have coronary disease?

A. If the treadmill is normal, I don't think it would be conclusive. If it was abnormal, it would he helpful.

Q. In other words, you could use it diagnostically if it showed an abnormality but if there were no findings, would you put any significance on the treadmill?

A. I have had a patient that had normal treadmill tests and carried all the way up to a heartbeat of 180 that I had referred to cardiologists and one week later he had a massive myocardial infarct. He was thirty-seven years old.

MR. NUTTER: May I have just a moment?
(Short pause.)

MR. NUTTER: Mr. Chief Justice, we have been discussing with Dr. Landrum certain records that he has in his file and I would like to offer these and move these into evidence if we could at this time as part of the record.

REPRESENTATIVE RISH: We would like to look at them because we haven't seen them.

JUSTICE ENGLAND: Would you be more specific on the records you are talking about?

REPRESENTATIVE RISH: If he will identify them and if we have seen them, then we don't have any objection. But if not, we would like to see them.

MR. NUTTER: Let me identify them, please. The correspondence from the Cleveland Clinic in 1973 with respect to the angiogram and the findings there.

REPRESENTATIVE RISH: No problem.

JUSTICE ENGLAND: No problem with that.

MR. NUTTER: The correspondence from Dr. Patterson from the Browne-McHardy Clinic June 30th of 1978.

REPRESENTATIVE RISH: No problem.

JUSTICE ENGLAND: Okay. No objection.

MR. NUTTER: The discharge summary of Dr. Landrum on August of 1973.

REPRESENTATIVE RISH: No objection.

MR. NUTTER: The discharge summary from Dr. Landrum on June of 1974.

REPRESENTATIVE RISH: No objection to that.

JUSTICE ENGLAND: No objection to those. If you will give them to the Secretary of the Senate for introduction and marking.

(Whereupon, the last above-referred to documents were received into the record.)

MR. NUTTER: Mr. Chief Justice, one other item that we have that the Board of Managers is aware of and they do have copies of would be the records from Dr. Crevasse from 1973 until the present date. And I would like to offer those and admit those into the record.

JUSTICE ENGLAND: Does the Board of Managers have any objection?

MR. NUTTER: These are the records that were provided from the hospital in Gainesville.

REPRESENTATIVE RISH: Are they all here?

MR. NUTTER: Yes, sir. Those are the complete records.

JUSTICE ENGLAND: Did you say the Managers had these before?

MR. NUTTER: Yes, sir. This is a complete record that we—

JUSTICE ENGLAND: Nothing additional added at this time?

MR. NUTTER: No, sir. No, sir.

MR. GLICK: This is data that was provided to us on Monday?

MR. NUTTER: Yes.

REPRESENTATIVE RISH: We have no objection.

JUSTICE ENGLAND: No objection. If you will give them to the Secretary of the Senate.

Mr. Nutter, does that complete your direct examination of this witness?

MR. NUTTER: Yes, it does.

JUSTICE ENGLAND: The Chair will recognize Representative Rish on the part of the Managers. And for the planning of the Senate, I would propose that after the direct and cross examination and re-direct of this witness and any questions from the Senators to this witness, we would take a short recess before hearing the only other witness on this subject. Representative Rish?

CROSS EXAMINATION

BY REPRESENTATIVE RISH:

Q. May it please the Court, Dr. Landrum, are you a cardiologist?

A. No, sir.

Q. What is your specialty?

A. Internal medicine—I am not a specialist, per se. I am a family practitioner but I do general medicine, surgery, so forth.

Q. Is it fair to say you are a family physician, family doctor and general practitioner?

A. Yes, sir.

Q. How long have you known Sam Smith?

A. Probably since about '58, '59 or '60.

Q. Have you known him any way other than professionally?

A. Yes. I have indicated that on occasion I have played golf with him and social occasions.

Q. Do you consider Sam Smith to be your personal friend?

A. Yes.

Q. Doctor, do you believe that he has ever had a myocardial infarction?

A. I did not initially. And the EKGs do not really bring it out. But in view of everything that has transpired and there is some slight indication on his cardiogram, I think that he has had some type of an infarction.

Q. Do you have any hard data that would support the fact that he has had myocardial infarction part two?

A. I myself do not but the opinion of the other physicians who felt that he has had an inferior and anterior MI.

Q. Doctor, along those lines, if you were talking to Dr. Crevasse and you had the same set of criteria, you were talking to the professor down there that runs the machines and EKGs and whatnot at the University of Florida, and he were a cardiologist and a Diplomate on the American Board, would you defer your opinions to him on the same set of circumstances?

A. You mean would I agree with him?

Q. If you and he had the same background, same data, would you defer to his opinion over yours in the field of cardiology?

A. I would not limit it to the electrocardiogram, itself, sir.

Q. I understand but the same data, do you think that his opinion would be better than yours, a cardiologist, a specialist in the field?

A. If he had not seen the patient and I had seen the patient, I would say no, his would not be better.

Q. What is a diplomate on the American Board? What does that indicate?

A. What board, cardiology?

Q. Yes, any Diplomate, board of anything. What does that indicate?

A. That is a physician who has trained as a specialist in some field. In the field of cardiology normally he trains in internal medicine. Then his subspecialty, he goes on for another year or so, and takes cardiology or heart.

Q. In an earlier conversation when I asked you the question, "Wouldn't we be safe in saying that that's the Cadillac of that field" and what was your response?

A. A Rolls Royce or—

Q. Lincoln Continental?

A. Mark V, something like that, Lincoln Continental, yes.

Q. Thank you very much, Doctor, the diagnosis of angina that we have, did you call it uncontrolled or what did you call it?

A. The angina, you say?

Q. Yes.

A. Yes, it's uncontrolled or unstable.

Q. Unstable?

A. Yes.

Q. What are the tests that show that?

A. This is pain that we're talking about. Pain cannot be measured. No pain that I know of can be measured.

Q. Is there a test that can tell us definitely that a patient has unstable angina?

A. There is a test that if it is positive it's usually called a treadmill test or stress test. If it shows ST segment changes or other changes on the continuing EKG and the patient is having pain, then it is quite significant. So, yes.

Q. Let's look at the Cleveland report for just a moment. I understood you, and maybe I was wrong, but I understood you to say the report indicated no bypass necessary. Is that in your report there, in that Cleveland report?

A. Yes, sir.

Q. Would you help us find that, please?

A. No, no. I beg your pardon. It is not in that report but it's in Dr. Crevasse's report somewhere along the line that he felt he was a candidate for coronary bypass.

Q. I assume that he went to Cleveland at the suggestion of you and Dr. Crevasse or one of you or both of you?

A. Yes, sir.

Q. To see what, if anything, was wrong and what, if anything, needed to be done, is that correct?

A. He went there for the purpose of coronary angiography to be done.

Q. Is that the same thing as a cardiogram?

A. No, no. No. This is where you inject the dye into the arteries.

Q. Is that the same thing as an arteriogram?

A. Yes, it's the same but you have to catheterize the heart for this, you see.

Q. After you suspect myocardial infarction or some coronary disease, you tell us that the logical thing to do is to have this arteriogram done to see what damage if any has been suffered, what parts of the heart if any are dead and what arteries if any are stopped up or clogged, is that the general purpose of it?

A. Yes.

Q. Anywhere in this report from Cleveland does it indicate that there has been a myocardial infarction?

A. In the Cleveland report, I do not think they mention anything concerning a past myocardial infarction. I thought they had but I am unable to find it.

Q. I thought I understood you to say there was reference to poor circulation. I'm sure you did. I think that was what you testified to within the Cleveland Clinic report. Could you tell us where that is?

A. Yes. They found out that he did have some vessels, coronary arteries with diminished lumen, that is the dye in the pipe or the vessel. And they were decreased in size, some 25 percent, some 15 to 20 percent. And one was narrowed to 40 to 50 percent of its normal size.

Q. Dr. Landrum, in the Cleveland Clinic report, do you have one of those before you?

A. Yes, I am looking at it.

Q. If you would look in the cover letter where they're thanking Dr. Crevasse for referring him, it says, "Naturally, Judge Smith and his wife were delighted with the findings. There was much discussion about his life style including the excessive alcoholic intake." Is Sam Smith a drinking man, Doctor?

A. Well, I don't know what you mean by drinking man. I think just about everybody drinks. And one drink is too much and two is too many and so forth. But to my knowledge—

Q. I assume that you got a copy of this report since you were the family physician?

A. Yes, sir.

Q. Did you see this in the report?

A. Yes.

Q. That he needed to cut down on his intake of alcohol?

A. And weight and food, yes.

Q. Did you know anything about his drinking? Did he drink excessively?

A. To my knowledge he was not an excessive drinker.

Q. Do you know what they meant by "the patient should do quite well if he is capable of making some changes at work, particularly. And, further, I sincerely hope he will be able to change his living habits so he will have less difficulty"?

A. I was aware of the fact that he had a rather heavy work load, aware of the fact that he was a few pounds overweight, aware of the fact that his blood pressure was elevated. And we all felt that he should lose weight and cut down on his work load and item number one there, that they recommended to return to normal activities but to avoid fatigue. He should get adequate rest.

Q. Dr. Landrum, are you familiar with the medical reports in 1974 and '75 when he was treated in Shands Hospital?

A. I don't have that in my file.

Q. Let me show you a copy of it and see if you have it and then I want to ask you some questions.

MR. GLICK: It's been admitted.

BY REPRESENTATIVE RISH:

Q. It's in evidence.

A. I can't tell whether this was an office visit or progress note or what. But it says discussed the principles, weight reduction, 1200 calorie type Four diet, no alcohol and discusses with the patient and wife and something about knowledgeable on calories and cholesterol, "patient will make an attempt at no alcohol", and it's signed by a nurse, "R. D.", which is registered dietitian.

Q. My question is this then. In the hospital over there when he was being treated and they recommended that he cut off all of his alcohol and in Cleveland when you all had sent him up there for an examination and they said he had a problem with excessive alcohol intake, and you were his family physician and a friend for more than 20 years, and to your knowledge he never drank other than socially?

MR. CACCIATORE: I object to that, may it please the Chief Justice. First of all, there is an inference here. And this matter that we are here before the Senate today, there is no accusation that Sam Smith is an alcoholic. That's my first objection.

And I think that it's improper, the insinuations being made here in this proceeding. Second, I object to the form of the question. This man has not previously testified that Sam Smith never drank. He said, if I recall correctly, that he had no knowledge of his being an alcoholic or engaging in excessive drinking. And I think there is a question of semantics there.

JUSTICE ENGLAND: I understand your objection. Representative Rish, if you would confine yourself to the medical testimony. There is, however, the right of cross examination in these proceedings to ask leading questions. If you confine yourself to what was said on direct, you can somewhat lead but please don't be argumentative.

REPRESENTATIVE RISH: Judge, I don't think it takes a Phi Beta Kappa for us to figure out that sometimes drinking also has something to do with cardiovascular disease and other problems that are connected therewith. And I am going to ask the doctor if this does interfere with a person's coronary system, with his circulation and whatnot.

THE WITNESS: Alcohol in small amounts is sometimes recommended by some physicians because it is a coronary vasodilator per se. But in excessive amounts, it can work quite the opposite. It could be harmful.

BY REPRESENTATIVE RISH:

Q. When you sent or you and Dr. Crevasse sent this man to Cleveland and got the report back, you have a copy there before you, wasn't this a good report for a patient that you had sent up there?

A. Well, it was good in one respect in that he didn't have the amount of damage to coronary arteries that Dr. Crevasse thought he had and felt that medical management would control his condition by losing weight and the things that are listed there, the six items there.

Q. Under the diagnosis it says coronary arteriosclerosis of mild degree. That doesn't bother you, does it, as causing problems?

A. No.

Q. There is a minimal prolapse of the posterior leaflet of the mitral valve but there is no coexisting mitral insufficiency. Does that bother you?

A. No, that doesn't bother me, no.

Q. Size, contour and contraction of the left ventricular chamber are within normal limits. Is that all right?

A. That's a good, very good report there.

Q. There is no evidence of an aneurysm or a valve lesion. Does that bother you?

A. Very good report.

Q. The dominant right coronary artery circulation, there is no evidence of an obstruction lesion in the major trunk or major branch of the right coronary artery.

A. That's good.

Q. The short left main trunk is unremarkable. That's all right, isn't it, is unremarkable?

A. Right.

Q. Then they indicate in the report that some of the arteries or branches have some clogging, is that correct, some stoppage?

A. Right. The branches of the left anterior descending.

Q. Is it so that in some people 5 percent may give him considerably more trouble than 20, 25 in another individual?

A. It can vary with individuals.

Q. When did you first give him an EKG?

A. To Judge Smith?

Q. Yes, sir.

A. 1964.

Q. Have you given him a number since then or seen a number that have been given to him?

A. Yes, sir.

Q. Is there remarkable change in any of these?

A. Not real remarkable, no. Some slight changes but not real —

Q. Not very much?

A. — dramatic, in other words.

Q. Doctor, you said that one of the tests that you would give to a person suspected of angina might be a stress test. Now you told us about that unfortunate 37 year old man who died a week after you gave him —

A. No, sir, he didn't die.

Q. I'm sorry, had a cardiac arrest or something, had problems for a week after you gave him —

A. Had a myocardial infarction.

Q. Had an attack a week after you gave it to him. What degree of his capacity did you take in doing that stress test, do you remember?

A. I didn't do the stress test. I sent him to a cardiologist of his choice in Jacksonville.

Q. Do you do stress tests?

A. Very rarely.

Q. You do EKGs?

A. I do EKGs.

Q. Do you do arteriograms?

A. No.

Q. If we found a person that we suspected of having unstable angina, what would be the test that a good doctor or a specialist would give him to find out if in fact his diagnosis was correct?

A. Well, if I am unable to control his angina or if he continues to have repeated attacks of chest pain or angina, I usually will refer him to a cardiologist or to a heart cath lab for — I would leave it up to them. Some of them will go ahead and do a stress test first. But the majority of them now, they go ahead and do the coronary angiography because that is more definitive and it tells you more.

Q. And those are the three EKGs?

A. Yes.

Q. When did Dr. Crevasse give him a stress test or did he?

A. I don't know whether he did or not.

Q. To your knowledge he never did?

A. I don't have it in my records.

Q. You didn't ever give him one?

A. No.

Q. Did anybody give him one that you know of?

A. Not that I know of.

Q. Did anybody other than in 1973 or '74 when he was in Cleveland, did he ever have an arteriogram done?

A. He only had one heart catheterization and arteriogram. That was done in Cleveland Clinic.

Q. Do you know why you or Dr. Crevasse or somebody hadn't suggested and inquired further into this man's situation to have these tests to see whether or not he has had in fact myocardial infarctions or whether he has got unstable angina or what his problem may be?

A. As to why what, sir?

Q. Why he hasn't had these tests to try to ascertain how sick he is, if he is sick?

A. Well, you mean since he has been to Cleveland Clinic?

Q. Yes, sir, five years ago. You testified he has been sick all the time and he is on the verge of dying and I wonder why we haven't had these tests over the last five years.

A. He was not on the verge of dying—after those two episodes—his first episode was '73. And so he had his angiography done after that. You have the report of that.

Q. Have you recommended that he have these tests?

A. Yes, about three or four weeks ago. When he came back from his problems in New Orleans and then when he started having severe angina again back in August I believe it was, I mentioned it to him and to Dr. Crevasse. He and I discussed it over the telephone and felt that it should be done.

Q. Other than a mild change in the EKGs, do you have any hard data other than Judge Smith's relating to you his pain and suffering and this sort of thing, do you have any hard data that would tell us categorically that he had suffered myocardial infarction and that he had unstable angina?

A. The hard data that stands out more in my mind is the fact that he had cardiac arrest times two and and almost died or was dead and had to be resuscitated.

Q. Were you present at either of those cases or were they related to you by someone else?

A. I was not present but another physician was present on both occasions.

Q. But you don't have any of the tests that we normally use, the three that would tell us that he has had either a myocardial infarction or unstable angina.

A. The EKGs that I have as interpreted by several other physicians, they call it an anterior and posterior myocardial infarction. I cannot see—I cannot read that much into it. It is not that dramatic to me but I will go along with it.

REPRESENTATIVE RISH: Thank you very much. We have no further questions at this time.

JUSTICE ENGLAND: Counsel for the Respondent, have you any redirect?

MR. NUTTER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR NUTTER:

Q. Dr. Landrum, with respect to a stress test, if a person is given a stress test—I want to ask you this because I think you were asked a question and I think you were about to complete your answer. A person is given that stress test and there is no findings with respect to that stress test on a particular day. Is that significant in determining whether or not a person suffers from coronary disease?

A. In my opinion you can have a normal stress test, not show any deviations from normal whatsoever but this does not rule out anything wrong with the heart.

Q. In other words, if you had an individual that was sent to you or came to you on one occasion without knowing anything else particularly about him and you looked at a stress test that you had run on him, could you conclude from that that he did not have coronary disease?

A. No, I could not do that. I can say he has a normal stress test, a normal EKG.

Q. And with respect to the EKG, the same situation relating to that one period of time, could you say that a normal EKG under those circumstances would indicate conclusively no heart disease?

A. A normal EKG would not indicate that he had no heart disease.

Q. Now with respect to the Cleveland report of 1973, that report does indicate a deficiency of blood going to the heart because of the decreased lumen in some of the vessels, is that correct?

A. That's correct.

Q. Now with respect to other aspects of the report, it turns out good, is that right?

A. Yes.

Q. That report is five years old. Would that report be a valid report today with respect to the other instances of cardiac occurrence that Sam Smith had up to the present time?

A. It would be interesting to compare that with a new one but things could well have changed. It has been five years. And I would suspect that you would find more occlusive coronary disease.

Q. Is coronary disease, once it's detected, a progressive disease, Dr. Landrum?

A. Well, arteriosclerosis is progressive. And that is usually the cause of coronary arteries being stopped up. But there are some people who have a heart attack or an infarct at an early age and never have another one and live to be 80 or 90. But that's not the usual thing.

Q. Dr. Landrum, would it be your opinion from your knowledge and your treating of Sam Smith from 1960 and the different instances that he has had up to the present time that he should not be subjected to any stress or strain of any further court proceedings with respect to this type of proceeding because of the strong possibility of myocardial infarction?

A. My answer to that is yes and also to the strong possibility of a sudden death syndrome, cardiac arrest or ventricular fibrillation or electrical death.

Q. Dr. Landrum, would you on a one time basis in seeing a patient and finding that they had no apparent, say, hard data with respect to a stress test or an EKG, but you did have knowledge of a prior history of heart disease, would you say that a person under those circumstances would be able to participate in something like this or would you rather have more information with which to base your opinion?

A. I need more information. I would have to evaluate him myself. I would go by his past medical history, total history, not just a cursory history but a total history. I would need that and a family history, good family history on him. Is he cardiac prone, is—because we all know heart attacks run in families and a body's build and the category that a person fits in. So I would use all of these data. One little diagnostic test doesn't tell me anything. I must have everything. I must have laboratory studies, cardiograms, maybe a stress test, which I don't put too much emphasis on, and all of the blood tests and everything else that goes along with it. Then you put them all together. But one little individual test does not tell you anything.

Q. If you were aware that this person had had other physicians who had treated him and diagnosed coronary disease, would you have consulted with them?

A. I would want all of their records and more than likely I would want to consult with each and every one of them.

Q. All right. Thank you, Doctor.

JUSTICE ENGLAND: Mr. Rish, do you have a few more questions?

REPRESENTATIVE RISH: I have got about two that bother me, Judge.

RECROSS EXAMINATION

BY REPRESENTATIVE RISH:

Q. Were you concerned about Judge Smith's health the first of this year?

A. The first of this year?

Q. Yes, sir, January, February, were you concerned that he might be under too much stress back then?

A. Was this during—

Q. During some hearings we were having, yes, sir.

A. Some hearings? Yes, I was.

Q. All right. Then I assume you were seeing him back in those days; is that correct?

A. I saw him not too frequently.

Q. But, Doctor, my point is this, in February I believe you wrote saying—

MR. CACCIATORE: Your Honor, we would object. We believe that he is beyond the scope of redirect.

REPRESENTATIVE RISH: I think it's not and I'll tell you why.

JUSTICE ENGLAND: I will rule that—he searched his medical records for a letter and I think his examination or examinations are relevant to the background of these and I will allow the question.

BY REPRESENTATIVE RISH:

Q. Are you familiar with that?

A. Yes, sir.

Q. All right. Could I have it back then, if you will?

A. All right.

Q. My point is this, Doctor, on February the 10th you wrote to Mr. Joe Jacobs about the condition of Sam Smith and this was related to us and the world about his condition.

Does it take from February until September the 13th to get two or three tests run at the University of Florida and the Cleveland Clinic or somewhere else to try to back up a prognosis or diagnosis that's based only upon the information related to you by your patient?

A. Does it take how long?

Q. From February until September the 13th to find out a little more definitely rather than just saying because he's having pains?

A. I don't follow what you mean, sir?

Q. When did you ever plan to have him examined to find out if he had the diseases which you suspect that he had? You haven't done that since February, have you? Dr. Crevasse hasn't done it. How long does it take to examine this man with the arteriogram that you told us about, which is the best test, you said, and the stress test which is also a good test, how long does it take to get those done on a patient?

A. The stress test, less than 30 minutes. The arteriogram is about a three-day stay in the hospital if you get along well. If he needs surgery, then you have got another ten days, two weeks or three weeks in the hospital.

Q. Thank you very much.

JUSTICE ENGLAND: Senators, under the rule you have adopted this morning any of you can ask questions of this witness, if you will just stand up and be recognized.

Are there any questions of this witness?

SENATOR BARRON: I have a couple.

JUSTICE ENGLAND: Senator Barron.

EXAMINATION

BY SENATOR BARRON:

Q. Doctor, would it be fair to say that as a doctor if you saw a person and examined him you would give him first an EKG and if that turned out bad that you would recommend a stress test if you were worried enough, and then an angiogram; is that the way it falls in line or is there any substance to that?

A. That depends on the symptomatology or the symptoms or the complaint that the individual has.

Q. Suppose he has no complaints but you have adverse findings in the EKGs such as flattening of the T waves or inverted T waves, whatever it is doctors talk about?

A. If he was not having any pain and had not had any pain in quite some time and he was stable, no, I would just observe him.

Q. Well, let's assume that he did have pain, and then you did give him a stress test and it turned out to be normal, would you then recommend an arteriogram or an angiogram?

A. If he continued to have severe chest pain anginal in nature, yes, I would recommend that.

Q. Well, don't you think that a normal stress test is a more happy finding for a prospective person with heart disease than elevated SGOT, for example?

(Short pause.)

Q. You said that you considered elevated—

A. SGOT can be elevated for some other reason.

Q. It just indicates some sort of infection somewhere in the body or maybe it could be a disease, it could be the liver.

A. It could be the liver, right.

Q. What has been his history as you have seen him in these five years relative to weight? How much overweight has he been? Has he lost weight?

A. At one time he was approximately 15 or 20 pounds overweight and in the last couple of years he has kept his weight down real well.

Q. And has that had anything to do with his blood pressure elevation?

A. It has helped to control his blood pressure along with the medications, yes, sir.

Q. What has been the highest and the lowest that his blood pressure has been, as you recall it?

A. Offhand I can recall his blood pressure being as high as 180 over 110. I would have to look.

Q. The last time you saw him it was 130 over 100?

A. Over 100 which—

Q. You said that was elevated on the bottom side?

A. That's right. On the bottom side.

Q. But that's not excessively elevated?

A. No.

Q. All right. Did you do a blood scan on him relative — when you got the SGOT, what about his cholesterol?

A. I have not done one recently. I'm not sure that Dr. Crevasse did one recently on him. But each time that he was hospitalized we do that routinely. But Dr. Crevasse was keeping a check on his lipids, triglycerides and cholesterol.

Q. What has been the finding relative to the triglycerides?

A. They came down but he was on medication for it, too.

Q. Did you ever recommend medication for his blood pressure?

A. Oh, yes. I have him on medication for that.

Q. Is he on that now?

A. Yes, sir.

Q. And you say his weight is down now?

A. Yes, sir.

Q. All right. Thank you, sir.

JUSTICE ENGLAND: Any other Senators? Senator Plante.

EXAMINATION

BY SENATOR PLANTE:

Q. Just a couple of questions, Doctor. I notice that when he was admitted to the hospital in Louisiana that he was taking antacid tablets. Does he have a history of a need for antacid tablets? Has he ever been examined for ulcers?

A. I do not have in my records here any recent examinations for ulcer or gall bladder or what not. But I think some years ago that I did do a GI series and a gall bladder series on him.

Q. I also notice that when he was admitted that he says — it says the patient also had a history of mild hypertension for which he was taking an unknown medicine; is that common for a hospital to admit a patient and not even know what medication that they are taking?

A. Well, at the time I think, Senator, at the time that he dictated this history he didn't have any medications but then later on he got them from the patient or from the family because he does list them at the bottom. And they're the same medications that I had him on to start with and that was Inderal, Isordil and Dyazide for his blood pressure.

Q. All right. Doctor, you seem to put an awful lot of emphasis on the history of the patient, yourself, and also the area of heart problems, the family history; is that correct?

A. Yes, sir.

Q. I noticed in the report from the hospital that his family's history is negative to any known problems as far as the heart goes; is that correct?

A. No. I think his father's up in his 80's and also his mother and to my knowledge he does not have any siblings that have heart problems.

Q. Thank you.

JUSTICE ENGLAND: Any further questions?

Thank you, Doctor. You will be excused at this time. We will have one more medical witness on behalf of the Board of Managers but I think it will be well if we take approximately a 10 minute recess and return at 3:50.

The Senate recessed at 3:40 p.m. and was called to order at 3:50 p.m. A quorum present—36:

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

JUSTICE ENGLAND: The hearing will come back to order. Before the recess, I had indicated to you that the next matter would be the presentation of medical testimony by the House Managers. I have now learned that there is a deposition to which a Dr. Crevasse, which was taken, the testimony perpetuated pursuant to an earlier order I had entered and is agreed by both the Managers of the House and the Respondent's Counsel that portions of that will be read by both sides at this time. I understand this is going to be quite brief, it's a limited portion of a deposition of Dr. Crevasse who is not here today.

Mr. Cacciatore.

MR. CACCIATORE: Mr. Chief Justice, may I inquire, it's my understanding that copies of this deposition have been furnished to the Senators.

SECRETARY: We have them available and we are distributing them at this time.

JUSTICE ENGLAND: Copies are available and they will be distributed here. They will be distributed during the period of time that you are talking. You may proceed.

MR. CACCIATORE: I would like to point out for the Senators that the deposition that was taken on August the 31st, 1978 in Gainesville was for the specific purpose of perpetuating the testimony of Dr. Lamar E. Crevasse who unfortunately because of arrangements he had made prior to our contacting him and prior to our putting him under subpoena could not be before the Senate to give live testimony on this matter.

May I have the Court's permission to wait until the copies are distributed prior to my reading those portions I would like to bring to the attention of the Senate?

JUSTICE ENGLAND: Mr. Cacciatore, why don't you go ahead? I think the Senators are paying attention and they're coming to their desks very, very quickly.

MR. CACCIATORE: All right, sir. I would like to point out in those instances where it is necessary to read both the question and the answer I will do so. Whenever possible I will try to avoid reading the questions so as to conserve time.

First, directing your attention to Page 4, I would like to point out to those present Dr. Crevasse's background.

Dr. Crevasse is a graduate of Duke University Medical School, did a residency program at Duke University Medical Center, Cornell University Medical Center, New York Hospital, Emory University Hospital in cardiology, University of Florida Medical professor. He was at the University of Amsterdam at the hospital and it's indicated that he has background in research and chemical background and has practiced cardiology for 20 years.

On Page 4 it's also indicated that he is presently a professor of cardiology and medicine at Shands Teaching Hospital and he has been in that position since 1958.

Dr. Crevasse is Board certified in both internal medicine and in cardiovascular disease.

On Page 5, he was asked whether he had done any writing in his profession and he has indicated Lines 2 through 4 that he has written approximately 50 papers in the medical clinical scientific areas on cardiovascular disease. Among the journals that his writings have appeared in are the Journal of American Medical Association, American Journal of Cardiology.

On Page 6 Dr. Crevasse indicates that Sam Smith has been a patient of his since October 5th, 1973.

On Page 6 Dr. Crevasse testified at Lines 21 through 22, quote:

"His electrocardiogram indicated a past heart attack."

Going to Page 9 beginning at Line 22 and continuing over to Page 10, the testimony is as follows, quote:

"Well, in the interim he was in New Orleans and I guess a stressful situation, he had three consecutive bouts of chest pain, then he had a bout of chest pain which he was unable to stop with nitroglycerin, crushing pain, and was carried by the emergency rescue crew to the East Jefferson General Hospital in Metairie, Louisiana where he was under the care of Dr. John Patterson. His electrocardiogram at the time showed injury."

On the same page down at Line 8, quoting again:

"Dr. Patterson consulted with me while he was there and also after he left and he sent me a copy of the electrocardiogram which shows clearcut injury to the heart on his admission."

Page 11 beginning at Line 8, quote:

"I saw him again on August 24, 1978 because according to Dr. Landrum he was having daily bouts of chest pain which had changed, pain at rest, pain that awakened him at night and this is highly ominous or a bad sign in that the pain pattern had completely changed and he had developed, in my opinion, unstable angina. By unstable angina, I mean that it's unpredictable and with this pattern within probability of having an infarction, a heart attack within three months is extremely high, extremely high."

I'm going to Page 12, beginning at Line 12, he was asked the following question:

"Did you give him any medical advice with regard to whether or not he should participate in the impeachment proceedings that are scheduled to begin on September 13, 1978?"

Answer, and I quote, "I told him I thought it would be detrimental to his health, yes, sir, I did."

On Page 15 beginning at Line 19 with this question:

"Doctor, in reviewing some of the medical records that I have I noticed that one physician indicated that there was an indication of electric death; would you please just explain to us briefly what that means?"

Answer: "That meant his heart stopped and either he had a standstill with no electrical activity or he could have had — could have a chaotic electrical activity both of which don't allow the heart to pump blood to the head and produce loss of consciousness and death unless one resuscitates the individual."

The next question: "Would it be your opinion that this is the problem that Sam Smith has?"

Answer: "Cardiac arrest times twice."

The next question, "Doctor, as I understand your previous testimony that your best medical advice to him is to stay home and not to participate in any proceeding that will put him under a great deal of stress?"

Answer: "That's correct."

On Page 16 beginning at Line 23, just reading an answer, quote—pardon me. He was asked about the significance of stress and this is his answer, quote:

"Stress is but — the important thing is that he is having pain at night and pain at rest which he has not had before. That's more than pain with stress and that is very clearcut and it's been elicited by two separate individuals, of an individual observation and I have no reason to believe that he has made this up or it's not real."

Page 17, Line 5, the question again is:

"The bottom line is the recommendation is that he not participate in any type of trial proceedings for approximately three months?"

Answer: "That's my medical opinion."

Page 22 beginning on Line 6, Dr. Crevasse says, and I quote:

"75 percent or 80 percent of the people that have angina or insufficiency to the blood vessels of the heart have a normal electrocardiogram. Judge Smith has a grossly abnormal electrocardiogram of anterior and inferior infarction."

Page 26 beginning on Line 5 with a question:

"Are there any signs or physical manifestations that would indicate that these pains exist?"

Answer: "No, sir. Because it's not usually the case unless you are there observing the patient and can listen to his heart or unless you can record an electrocardiogram on him."

Page 26 beginning at Line 18 with a question:

"What is Judge Smith's future, healthwise?"

Dr. Crevasse replies: "It's difficult, it's really difficult to prognosticate, but statistically he is running out of time in terms of percentages. That, one, his condition is going to get worse. Two, he's going to have another heart attack. And three, that statistically he is going to die from his heart. And whether this is tomorrow or two weeks from now or two years from now, I can't predict with a reasonable degree of medical certainty. But within a reasonable degree of medical certainty that scenario that I alluded to is the way it's going to be."

Page 27 beginning at Line 21 with a question:

"Is Mr. Smith's situation complicated by what you call stress?"

His answer: "Yes, I think it's complicated by stress. Obviously his chest pains are brought on by stress and the degree of stress and worry that he is exposed to. But, again, I would point out that that is a very serious factor. But the thing is this guy is having pain at night and at rest which he has never had before and in that situation and in the situation of extreme emotional stress he is in quite an unstable condition cardiacwise."

May I have one moment?

JUSTICE ENGLAND: Yes.

(Short pause.)

MR. CACCIATORE: Thank you very much, Mr. Chief Justice.

JUSTICE ENGLAND: Mr. Glick, are you going to read portions of the same deposition?

MR. GLICK: Yes, sir, I am.

If I could refer the Senate, please, to Page 10, Lines 13 through 18:

"He then saw me on 7/10/78 and I examined him. In the interim, he had had no symptoms since he was discharged from the hospital. He was doing well. I told him that this was serious but that I thought he could proceed. I thought it was perfectly okay for him to go back to New Orleans because of his history."

Turning, please, to Page 22, Line 24: "To your knowledge, has he conducted himself in terms of a level of activity with your instructions?"

Answer: "Since 8/24/78? Since when?"

Question: "Since he began to see you as a cardiac patient."

Answer: "I would say usual, I would say so-so, I would say he has not rigidly followed all of the instructions."

On Page 23, Line 19: "When you speak of sudden death in your affidavit that Mr. Cacciatore has referred to, are you talking about a person suddenly dying and their life terminating at that instant or are you talking about, as I seem to understand, a stopping of the pumping mechanism of the heart for an instant until it can be revived?"

"Both of those are correct. In the situation that he is in he does not get enough blood to his heart. When he does get enough blood to his heart he develops crushing chest pain and then his heart either—I can't be precise—but it either can stop or it can develop electric fibrillation, ventricular fibrillation."

On Page 24: "Doctor, is there any way to measure the severity of the chest pain?"

Line 15, answer: "No. People have different threshholds. However, if the patient is connected to an electrocardiogram at the time he's having chest pains, he should, maybe, show some changes as he did here and during a severe bout of chest pain his ST changes or the electrocardiogram may markedly have changed."

Page 25, Line 18: "You have spoken of Judge Smith's complaints of chest pain over the last month. Is there any way to verify it or has there been any verification that there were indeed pains, symptoms, signs, physically manifested signs of these symptoms?"

Answer: "Well, there are pains that are crushing in nature in the center of the chest and to his left arm identical with what he has had in the past, relieved partially or promptly by nitroglycerin."

Page 26, Line 2: "My question is this; these are symptoms reported to you by your patient?"

Answer: "Right."

Next question: "Are there any signs or physical manifestations that would indicate that these pains exist?"

Answer: "No, sir. Because that's not the usual—that's not usually the case unless you are observing the patient and can listen to his heart or unless you can record an electrocardiogram on him."

On Page 28, Line 7: "Once again I ask you, the pain that's reported, this is a symptom as opposed to an objective sign?"

Answer: "Angina is a symptom, right."

Line 11: "With respect to the condition that you have discussed with Mr. Cacciatore and myself today, how much of it is supported by objective clinical data?"

Answer: "Well, there can't be any objective clinical data with people that are having angina unless you record it with an electrocardiogram while they are having it. When I saw him, he was not having it but I can say that even though it's so-called nonobjective, it's real."

Page 30, Line 4: "Once again, though, with respect to the complaints that Smith has discussed with you in the last three or four weeks, you have no physical manifestations, anything other than the subjective symptoms that have been described to you, there are no signs?"

Answer: "Right. Which I must add is not unexpected."

And on Page 23, Line 7: "Has there been an angiogram in the last year?"

On Line 9 the answer is: "There has not. I have recommended it. That was my first recommendation to him."

JUSTICE ENGLAND: Thank you, gentlemen. That concludes the reading of Dr. Crevasse's deposition. And now I believe the Board Managers wish to call Dr. John Wilson as a witness.

REPRESENTATIVE RISH: That's correct, Your Honor.

WHEREUPON,

DR. JOHN WILSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

JUSTICE ENGLAND: Mr. Rish, is this your witness?

REPRESENTATIVE RISH: Yes, sir.

DIRECT EXAMINATION

BY REPRESENTATIVE RISH:

Q. Doctor, would you please state your name?

A. Dr. John Wilson.

Q. Dr. Wilson, would you give us your educational background?

A. Premed at the University of Florida, Medical School at Emory, an internship in internal medicine and a residency in cardiology and a fellowship at Emory related institutions in Atlanta.

Q. All right, sir. Do you have a specialty?

A. Yes, sir. Internal medicine, cardiology.

Q. How long have you been practicing in that field?

A. A little over 10 years.

Q. Do you hold any particular offices or honors or are you a diplomate of the American Board of Cardiology?

A. Yes, sir. I'm Board certified in internal medicine and I'm Board certified in cardiology.

Q. I see. Have you had an occasion to examine Judge Sam Smith?

A. Yes, sir. On 9/11.

Q. Either prior to that examination or prior to writing the report let me relate to you some of the instances and some of the areas that he has been and some of his background and I don't — I want to know if you had access to all of this and if you did, in fact, study this stuff and have it available to you.

First of all, there has been six or eight EKGs over the last few years from '73 or '74, in that area; did you have all of those available to you?

A. I had three from '73-74 and four from '78.

Q. Did you know that he had been in Shands Teaching Hospital?

A. Yes, I did.

Q. In Gainesville?

A. Yes, sir.

Q. Did you know that he had been treated by Dr. Landrum and by Dr. Crevasse?

A. Yes, sir, I did.

Q. Did you see their reports and correspondence insofar as—

A. Yes, I did.

Q. Did you know that he had been to the Cleveland Clinic?

A. Yes, sir.

Q. Did you look at the reports from that institution?

A. There weren't any reports furnished at that time. A simplified summary was available, their findings, and I saw the report from the Cleveland Clinic today.

Q. All right, sir. But you had seen a summary of their findings prior to today?

A. Yes, sir.

Q. Now did you know that he had been hospitalized in New Orleans while he was undergoing a trial out there?

A. Yes, I did.

Q. Did you have the benefit of those records?

A. Yes, I did.

Q. All right. I think I have pretty well covered them, but to your knowledge have you learned since examining Sam Smith or since writing your report, have you learned that there may be other places that he was hospitalized or other doctors he saw or other tests that were run on him that you didn't have available to you?

A. I had available summaries, discharge summaries, history physicals and some laboratory data. I did not have the entire hospital records from those alluded to. I'm not aware of any other hospitalizations or any significant events that occurred. No, sir.

Q. Do you feel that under the circumstances that you had, that you were called upon, the examination that you were called upon to make, did you feel that you had sufficient data to perform an operation and give a professional opinion — I mean examination.

A. I think so, yes, sir.

Q. All right, sir. Would you tell us what you found, what your results were after you examined all of these documents and the background and after you had examined Samuel Smith?

A. All right. It's my impression that Judge Smith has a coronary disease and in that instance I would agree with Drs. Landrum and Crevasse. I think the real problem is in trying to define the level of the present function. Their jobs were a little different than mine. I was asked to try to predict what his outlook was over about a week period, this next week, as I understand it. I was not asked for a major diagnostic or therapeutic recommendation over the long run. So my job was to try to come to some calculated judgment about his present condition and whether these impending proceedings would constitute an unreasonable risk on him.

I reviewed all of the records that were sent to me. I did not agree with the interpretations of some of the tests. I did not agree with all of the clinical assumptions that were made as to diagnoses at the time.

I was concerned that this was a person who had had symptomatic or possibly symptomatic coronary disease supposedly since 1966, had two episodes which at one time or another were interpreted as cardiac arrest. One or possibly three myocardial infarctions and I was impressed by the fact that in all of these, this data that I got, including all eight cardiograms, enzyme studies, summaries and so forth and summaries from the Cleveland Clinic, that there was no good data that indicated hard diagnostic quality information that he had ever had a myocardial infarction. There was some question as to the interpretation of the events that subsequently have been termed cardiac arrest.

For instance, the fact that he might have been admitted for a myocardial infarction on one occasion, his cardiogram was not diagnostic, his enzymes were not diagnostic. This is a possibility but if you take all of these events and then look at all of the data, it, to me, was very unlikely that all of these events could have occurred as were thought to occur. In other words, myocardial infarctions and cardiac arrest and not have at least some more suspicious evidence than was present.

His cardiograms in those records, none of which showed any diagnostic abnormality, in my opinion. There was only one cardiogram which in my opinion was even suspicious of abnormality. And the next three cardiograms over the subsequent week all showed no diagnostic abnormality. So, it's possible that on one event that one could have a myocardial infarction and have a nondiagnostic electrocardiogram and that the enzymes may not be diagnostic.

But I had the opportunity of reviewing all of this in a short period of time and it seemed extremely unlikely that these events did occur in that fashion.

Q. Doctor, are you saying then that it would be hard for you to take all of the background and the examinations and say that he ever had a myocardial infarction?

A. I would have to say there is no good evidence he ever did, in my judgment. I can tell you why.

Q. All right, sir, tell us why.

A. The cardiograms that he had, the ones who suggested that there was actually diagnostic injury present, I would very pointedly disagree with and feel very comfortable in doing that. The indications that he had previous injury, previous infarction, scars, dead zones, I would—as far as this being of any degree of certainty, I would very markedly disagree with that. His cardiograms—the criteria that were used to say possible infarction are seen very frequently in normal electrocardiograms and are both the inferior or the lower surface of the heart attacks and the front wall heart attacks which were both diagnosed on his previous cardiograms. The criteria used to reach that possibility, diagnosis possibility, are very unreliable. And I think most cardiologists would agree with it.

Q. Did you give the man an actual examination?

A. Yes, sir.

Q. What did you do in your examination?

A. I spent a great deal of time talking to him. And he has a history that is quite good for angina. I think he has some symptoms which are most likely not related to his heart.

Q. Excuse me, Doctor, was Judge Smith cooperative and ya'll had a good rapport?

A. Yes. I guess one of my greatest misgivings was having to possibly try to evaluate an uncooperative patient who would refuse to do some things that are needed. And this would have made my task absolutely impossible, just about. And I would have to say that he was extremely cooperative. And I felt that he was very honest and attempted to withhold no information. And I think he and I were comfortable together.

Q. Now go ahead with what you were doing.

A. I think his history would have to lead one to believe that he did have coronary disease and angina. I don't have any problem with that. It's a matter of trying to define how much and how bad and things like this.

With some misgiving, because there is some risk involved, I decided to put him on a treadmill if he agreed. And he agreed without any problem. He had some nonspecific changes on his electrocardiogram. And, frankly, the electrocardiogram in my office did show some changes that I would be uncomfortable with without any further evaluation.

These changes are what we call ST segment depression. However, the ST segment depression was of a sort that is what we call nonspecific and can be due to other things other than actual coronary disease or ischemia or angina.

Q. Such as what?

A. Such as drugs. He was on two and probably three drugs that can cause these changes. This, of course, caused me a little bit of a problem. And so I felt that I was under some obligation to try to reach a judgment. The fact that if he had had unstable angina for this long period of time and significant problems maybe since 1966, that he had already been through excessive risk and that one additional risk would not be out of reason. So I did put him on the treadmill. And my feeling was that if these changes were indeed due to coronary insufficiency or coronary disease, these abnormalities, and if all of his symptoms were indicative of angina, by increasing his heart rate, it would be very easy to demonstrate a diagnostic abnormality.

I really thought that he was going to flunk it in great fashion. I put him on it very cautiously and a little nervous and gradually increased his heart rate. And actually we achieved a rate of about 175, which is roughly about 90, over 90 percent of the maximum rate that his heart is predicted to go.

And at no time did he develop any kind of suspicious rhythm problem. He didn't skip a beat. He had no extra beats. He had no chest pain. And these changes on his cardiograms did not change and did not worsen as I would have expected them to do if all of his problems were indeed, including his electrocardiographic abnormalities were from his coronary disease. I was surprised that he did this well.

I would like to take this instance to make a very short comment. And that is that some of you may have had occasion to look at the newspapers this morning for one reason or another. I did and I was very upset at some of the reportings pertaining to these proceedings. And that is that UPI and Tallahassee Democrat and Jacksonville Times Union got hold of a medical document that I had sent to Mr. Glick regarding some of the preliminary results of my evaluation.

JUSTICE ENGLAND: Dr. Wilson, I am going to interrupt you and say that the medical document will speak for itself. You are certainly able to interpret that but I don't want you to make comment—

THE WITNESS: The indication was that I said he was physically normal and that is completely false.

JUSTICE ENGLAND: You can certainly explain that from your medical findings.

THE WITNESS: I lost my train of thought. At any rate, my feeling at this point, I don't agree with the diagnoses of Drs. Landrum and Crevasse. I think that's important to know. I think he probably does have significant coronary disease which involves an entire spectrum from relatively mild risk to horrendous risk.

There are things that bother me about previous records. And I think I have indicated these. I felt that to try to reach some judgment, probably the best test that I could do to render at least some opinion would be the stress test. That, plus the knowledge that he has had a long stress test already, which I think is very important. He has had a long stress test and that, in conjunction with my stress test would indicate to me but I feel reasonably comfortable saying I think he is going to do all right over the next week with some more stress. I also think it is important to tell you that I can't give you any guarantees about him or you either. I think that's important to know. This is just my best judgment.

BY REPRESENTATIVE RISH:

Q. Doctor, you wrote a report to our staff counsel on September 11th?

A. Yes, sir.

Q. I have a copy of that before me and, of course, it has been filed officially with the Senate. Since that time I believe you have even requested and seen maybe some additional reports and EKGs and others that you have not seen. Is there anything to your knowledge now that is any different or do

you still feel the same as you did when you wrote the report on September the 11th?

A. Yes, the additional information I saw like the other cardiograms, Dr. Landrum's files I think back in 1964 and subsequently would indicate that there has not been appearance of dead zone as has been interpreted by other doctors. The evidence from the Cleveland Clinic which I just got today is I think very significant in that five years ago he was felt to have significant disease of a mild degree. This would bring to mind a real question of whether he had had—his previous episode had indeed been a cardiac arrest.

The other thing that I think makes it unlikely that the cardiograms that have been judged abnormal were really abnormal, was that he had what we call a ventriculogram which assesses the muscle itself. And if there are indeed big scars in that heart muscle, the ventriculogram ordinarily will not contract in a normal fashion. There would be areas that do not contract. And this was not found and so this is further indication that these do not represent significant abnormalities.

Q. Then let me say for the record that your letter, which we filed this at the suggestion of the Chief Justice, with the Senate as we normally do when something is going to become an official document. And I am sure you are familiar with everything in there. We apologize also for any misinterpretation by anybody.

A. I think it was a misinterpretation which I sure would like to see corrected tomorrow. It implies that I am saying that his doctors are incompetent or that I am incompetent or that we are all incompetent. And I don't agree with that. I'm sorry.

JUSTICE ENGLAND: You caught the Senate at a good time. I don't think a further explanation is necessary.

THE WITNESS: This has never occurred to me.

REPRESENTATIVE RISH: Just observe, it's obvious that the good doctor has never served in the Legislature but we apologize for any misinterpretation.

BY REPRESENTATIVE RISH:

Q. But, Doctor, my question to you is that document is now an official document and it will speak for itself. And I see there that you said that "My judgment would be that he could withstand the stress of his Senate proceedings with acceptable risk"?

A. Yes, sir.

Q. Do you still feel that way about it?

A. Yes.

Q. Have you seen or heard or known anything since September 11th that would in any way make you change your opinion that you just gave us?

A. No, sir. The only data I have seen has made me feel more comfortable.

Q. In your opinion then, other than the fact that you have indicated to Mr. Cacciatore and me that you wouldn't even guarantee our hearts until tomorrow night?

A. No, sir, I sure wouldn't, or mine.

Q. You still feel reasonably certain we can proceed with the proceedings?

A. Yes, sir. I would like to add, I think there are reasonable precautions that ought to be taken, although I certainly hope and stated that I don't think they are going to occur. And I think these provide reasonable safety. And that has to do with doctor available, medical technicians, monitor, resuscitative equipment. And I think that combined, hopefully, with the correct judgment on my part will make all that unnecessary and safe.

REPRESENTATIVE RISH: Chief Justice, we tender for cross examination.

JUSTICE ENGLAND: Mr. Cacciatore, are there any questions of this witness?

MR. CACCIATORE: Yes, Your Honor.

REPRESENTATIVE RISH: Mr. Brown, has this letter been distributed? We would like to distribute it if we could, Your Honor.

JUSTICE ENGLAND: It's already in evidence. Isn't it distributed?

REPRESENTATIVE RISH: We would like, if we could—it has been filed—but we would like at this time to introduce it into evidence as one of our exhibits.

JUSTICE ENGLAND: Any objection from the Respondent?

REPRESENTATIVE RISH: Managers' Exhibit 1.

MR. CACCIATORE: No objection, Your Honor.

JUSTICE ENGLAND: It will be introduced. Mr. Cacciatore, before you begin with this witness, I see Senator Hair would like to speak.

SENATOR HAIR: Mr. Chief Justice, I believe we were scheduled to adjourn at 5:00. I would like to move that we now extend the time of adjournment until completion of the hearing on the motion for continuance.

JUSTICE ENGLAND: The motion is well taken. We're operating under the letter that Senator Brantley sent which would have terminated the proceeding at 5:00 o'clock in the absence of an extension. Is there any discussion on the motion of Senator Hair with regard to the extension of time until we complete these aspects of the proceeding?

(No response.)

JUSTICE ENGLAND: All in favor signify by saying Aye.

THE SENATE: Aye.

JUSTICE ENGLAND: Any opposed?

(No response.)

JUSTICE ENGLAND: Thank you. Mr. Cacciatore.

CROSS EXAMINATION

BY MR. CACCIATORE:

Q. Dr. Wilson, I assume you have before you a copy of your letter of September 11th, 1978 addressed to Mr. Glick?

A. Yes, sir.

Q. Directing your attention down to Line 3, I am going to read from your letter. You please stop me and correct me if I misread. You say, quote, "But I am impressed by the lack of hard data regarding previous myocardial infarctions and his episodes of 'cardiac arrest'." You wrote that?

A. Yes, sir.

Q. And as I understand the testimony that's been elicited thus far by Mr. Rish, you have indicated that in your opinion there has been no hard data of cardiac arrest?

A. Yes, sir.

Q. Again, you have been provided with all the medical records that we have available?

A. I have. I can explain that, if you would like.

Q. Well—

A. Excuse me. I'm sorry.

Q. If you can't answer a question I ask, please tell me. I haven't asked a question yet.

A. Okay.

Q. Do you recall in those records that there was an incident where a doctor, a physician, an M.D., was in an ambulance with Sam Smith?

A. Yes, sir.

Q. And Sam Smith's heart stopped beating.

A. Okay.

Q. He had no pulse.

A. Right.

Q. His eyes rolled back in his head.

A. Right.

Q. You do not consider that to be hard data?

A. No, sir.

Q. All right.

A. Do you want me to tell you why?

Q. Yes, sir.

A. Approximately six weeks ago a similar occurrence occurred to me with a doctor's father in the emergency room having a documented heart attack. He even had a monitor on. And I was watching that monitor. And his monitor straight-lined. His eyes rolled back in his head. And I interpreted that as a cardiac arrest, even with a monitor. And I beat on his chest and he resisted. He didn't like that at all. And so I am saying that even with a cardiac monitor with a doctor who has seen a significant number of cardiac arrests there, you can be wrong. I think there are, for instance, both occurrences of these cardiac arrests occurred one time after he had been given some Demerol. I have had occasion where a patient has had an excessive reaction to Demerol. And this sometimes follows some alcohol ingestion. In which the patient quits breathing and his oxygen drops enough where he loses his blood pressure and you can't feel his pulse and you interpret that as a cardiac arrest but it's not truly a cardiac arrest. And that is a very distinct possibility.

Both of these episodes of cardiac arrest were followed by hospitalizations and cardiograms. And although it does not absolutely and unequivocally 100 percent rule out those possibilities, I think it's extremely unlikely that these episodes would have been cardiac arrests with the cardiograms that look that good without any enzyme changes and plus the fact that the first episode or the second episode, the doctor on admission and on his discharge summary called this evasive syncopal reaction which is a common faint or similar to that. And on the second, or the other one, he hemmed and hawed a little bit and did not make that a definite diagnosis. And plus the fact that he was discharged in two days. And I think if you have got a doctor that thinks a person has had a cardiac arrest, that would be extremely unusual. And for these reasons—I cannot prove that either one of these episodes were not, nor can anybody else. It just makes me extremely suspicious.

I think from approach to this patient and trying to decide what's best for him you have to think well, maybe they are.

To assume that everything that happens is benign, not going to harm you, it's going to get you in trouble. Just like assuming people's chest pain is angina. You better do that because if you assumed every chest pain is gas, you are going to be in trouble. So I think the appropriate things were done by the doctors. I am not absolutely sure in retrospect that these were absolutely accurate but I think that they made the correct decision because you better think of things as cardiac arrest because there's a possibility of it going untreated or if it's gas or common faint, you won't do any harm.

Q. That's what I am trying to get to, Doctor. From your letter, one can draw the conclusion that you are saying positively with certainty that Sam Smith in 1973 and '74 did not have a cardiac arrest.

A. No, I did not say that.

Q. That's what I want to clear up.

A. No. I am impressed by the lack of hard data regarding previous myocardial infarctions and his episodes of "cardiac arrests". Cardiac arrests in quotes.

Q. To state it another way then, you can't state with certainty that he did not have a cardiac arrest?

A. No, sir, that's right.

Q. I believe that you indicated that two of the things that impressed you were the treadmill or stress test that was administered in your office and, secondly, the stress test that he has had for the past year or so. And this has helped you in arriving at your conclusion, is that correct?

A. I think that would be reasonable, yes, sir.

Q. You are aware of the fact that during this year long stress test that one of the trials had to be stopped and he had to be hospitalized?

A. Yes, sir. And I am in possession of those records, too, which show nothing definite. And, I might add, was not—the discharge summary on that was dictated and myocardial infarction diagnosis was not added until later and somebody wrote it in hand later. And that made me wonder why they didn't dictate—if they thought it was an infarction, why they didn't dictate it at the time of discharge rather than some subsequent time and add it in handwriting. I don't know who did it and when and why.

Q. Going back to the records in Louisiana, though, there has been an interpretation by the doctors there that administered those tests, whatever you call that, and I don't know who would be responsible for reading it and making the interpretation but apparently there were some doctors in Louisiana during the summer this year who found something in the electrocardiograms that you did not find, is that fair to say?

A. Yes, sir. And several cardiologists as of two days ago looked at those same cardiograms and didn't find it either.

Q. When you were directed to make this examination, was part of your duties to distribute this information?

A. No, sir, it was not. My job, as I saw it, was to try to do the best I could to try to make a judgment about the risk to Dr. Smith—correction—Judge Smith. And I thought that since I had disagreement with people who I felt were reputable

doctors that I—although I felt comfortable—I felt like quite conceivably some doctor—some lawyer might jump down my throat and say, "Who are you to do this?" And I would like to have some other good doctors look at it period, just the cardiograms, blind, with no names and say, "What do you think about these? Does this show there is an infarction? Is there anything on there that's diagnostic of myocardial ischemia?" They looked at the interpretations also. And all three of these doctors who were, I agree, I feel are excellent doctors, there was no question in their mind but they concurred with my opinion.

Q. You showed them the electrocardiograms?

A. Yes, sir.

Q. You didn't show them the history and the other material you had?

A. I gave them the history. I asked them just to look at the cardiograms.

Q. Let me assure you of this, Doctor. No good lawyer is going to jump down your throat. So rest easy.

A. Okay. All right. If you say so.

Q. When I talked to you in your office and we took your deposition on September 12th, you indicated that you regarded Dr. Lamar E. Crevasse from Gainesville as an expert?

A. Yes, sir, to my knowledge.

Q. And you have read his deposition?

A. Yes, sir.

Q. So I take it, and please correct me if I am wrong, that in substance you and he have arrived at diametrically opposed positions?

A. I disagree very markedly, yes, sir. I don't agree with your statement.

Q. Well, didn't he say—

A. This depends on what we're talking about, okay. Now let's define what part we disagree on, okay.

Q. He has indicated in his deposition because of the condition and the complaints that he found Sam Smith on August 24th, if my memory is correct, 1978, that in his opinion Sam Smith had developed unstable angina.

A. Yes, sir.

Q. You disagree with that?

A. I will say on the basis of listening to Mr. Smith's complaints that that would have been a very reasonable impression to have gotten at that time. Yes, sir. I can't quarrel with that.

Q. I'm sorry. You don't disagree with that?

A. Yes, I'm not sure it was correct but I cannot quarrel with his reaching that opinion. And I probably would have done the same thing at the time.

Q. I believe that in his interpretation of the electrocardiograms and, quite frankly, Doctor, I'm sure from your reading of the deposition you got an idea of what he was talking about. I didn't know which ones he was referring to. But you disagreed with that?

A. Yes, sir.

Q. With his interpretation?

A. Yes, sir, I do. I disagree with his comments. He actually did not say on the official interpretation itself that this was a definite myocardial infarction. It said "Suspect", which means there is no way we can be absolutely sure one way or the other. In his subsequent letters he did indicate that his cardiogram showed myocardial infarction which is what I disagree with.

Q. Let's get back not to the year stress test but the stress test in your office. First of all, how long was Sam Smith in your office? By that I mean—

A. How long did I examine him?

Q. Right.

A. Okay. He came about 15 minutes before I got to him. From 10:15 until 12:30.

Q. Two hours and 15 minutes, is that right?

A. Yes, sir.

Q. And you had not seen this man before?

A. No, sir.

Q. You had not treated him before?

A. No, sir.

Q. You had not examined him before?

A. No, sir.

Q. Isn't it true, Doctor, that just because one is given a stress test and there is no indication of abnormality, this does not exclude someone having angina pectoris?

A. Not absolutely, you're right, nor have I quarreled with the existence of angina.

Q. Well, again, the conclusions you have reached upon your examination was based upon primarily the electrocardiogram you did, the one during the stress test and the stress that he has been under for some time, did I misinterpret that?

A. I can't simplify it quite that easy. I would have to say my conclusion was based on reviewing his entire data, talking to him, looking at his cardiograms, looking at him while he was on the treadmill, looking at the—you know, it's sort of hard to say what you base it on. You have to put it all together and come to a conclusion.

Q. You recall yesterday, I guess it was yesterday, whenever it was, Monday, I read you a couple of portions of Dr. Crevasse's deposition and asked you whether you would agree or disagree?

A. Yes, sir.

Q. I would like to do that if I may again. Page 11 of the deposition of Dr. Crevasse, lines 14 through 17, quote, "By unstable angina, I mean that it's unpredictable and with this pattern within probability of having an infarction, a heart attack, within three months is extremely high, extremely high." Would you agree or disagree with that statement?

A. Yes, sir. I'm sorry. I would agree.

Q. Again, referring to Dr. Crevasse's deposition, on Page 22, lines 6 through 8, "75 or 80 percent of the people that have angina or insufficiency to the blood vessels of the heart, have a normal electrocardiogram." Do you agree or disagree with that?

A. As I indicated the other day, I wasn't sure about the percentages. But I believe a very significant number of people

who do have angina may have a cardiogram that's within the wide range of normal.

Q. Let me read you one other statement and see if you agree with this or disagree. "An EKG evaluation of patients with chest pain in a resting state detects only a small percentage of the total population who have significant coronary artery disease." Would you agree with that?

A. Some degree. It depends on when it's taken. I would say that—and it depends on how you define small. I would say that it does not clearly indicate as many as we would like. I don't quarrel with that statement.

MR. CACCIATORE: May I have one moment, Your Honor.

(Short Pause.)

BY MR. CACCIATORE:

Q. Prior to your examining Sam Smith, did you consult with any of the doctors that had examined him in the past?

A. No, I did not.

Q. Neither Crevasse, Landrum, Weiffenbach, Patterson, anybody?

A. No. The only thing I had was the information that was provided to me.

Q. As I understand you, it's your opinion that he can be here within acceptable risk but that you cannot guarantee that he won't have a problem?

A. I think that's reasonably stated.

Q. With regard to this acceptable risk, do you think it would still be safe to have some equipment, technicians here in the case something does happen?

A. I think it would be a good idea. I think it would make him feel better. I think all of you would feel better, make me feel better.

Q. Don't you think that the fact that you recommend that equipment like that be here is indicative that he has a problem that is real, that something could happen?

A. I agree that he has a problem that's real. And I will agree to some extent it's not completely predictable. And I can't guarantee you that I am 100 percent right all the time. And if there's a chance that I am wrong, I would like to be—it would hurt my feelings terribly for something to happen to Judge Smith. And since I am in a situation where very rarely can I ever give anybody any 100 percent black or white answers about whether they are going to be alive today or tomorrow, I just would feel a little bit more comfortable with it here, although I don't think we are going to need it. And I sure pray we don't.

MR. CACCIATORE: Thank you.

JUSTICE ENGLAND: Mr. Rish, anything on redirect?

REDIRECT EXAMINATION

BY REPRESENTATIVE RISH:

Q. Doctor, did you say that three other cardiologists had examined the EKGs with you at your request here at Tallahassee?

A. Yes, sir.

Q. Did you hear Dr. Landrum testify this morning before the Committee?

A. Yes, I did.

Q. Did anything that he said happen to make you change your mind about anything you found, any opinions you had?

A. No.

REPRESENTATIVE RISH: No further questions.

MR. CACCIATORE: No further questions, Your Honor.

JUSTICE ENGLAND: Senators, any questions from the floor?

EXAMINATION

BY SENATOR BARRON:

Q. You are rather strong on not having a cardiac arrest five years ago?

A. No, sir, I am not. I am just bringing a great degree of suspicion up and trying to fit it all in, all right. I think that there is not any conclusive data there that proves that he did. That's all I said. I wouldn't bet a lot of money on it.

Q. You would admit that he has heart trouble, though.

A. I think that he does.

Q. There has been testimony that there was a doctor in the ambulance with him and there was testimony that his heart stopped and there's testimony that he was going to die if they didn't get it started again. It just seems of little comfort to me what you would call it, but admitting all those things, can't you go ahead and call it cardiac arrest without being so worried about—

A. I would be uncomfortable with saying there was no question — that it was unquestionably definite that it was. I would be very uncomfortable with that. I would be very uncomfortable saying — like I say, you have to assume that these things occur to be able to handle these emergencies. He had a subsequent ventriculogram and it did not show major coronary artery disease. It did not show previous infarction. And the cardiogram and enzymes at that time, subsequently and during his hospital stay, none of which were even suspicious of anything like this, that none of these things taken by itself proves that he didn't. If you add them up and say two episodes of it and still none of them add up, that to me makes the likelihood of a cardiac arrest on either occasion very doubtful but not impossible.

Q. In regard to your fear that I'm sure you have as a doctor or physician of Judge Smith, we might need some equipment here for Senators Glisson and Firestone, according to how long we stay here.

(Laughter.)

Q. But in giving a stress test and finding good results that you found—

A. No, sir. Well, good and bad is relative and I felt that the results were much better than I had anticipated assuming that he had had that degree of unstable angina.

Q. My question is, is the stress applied to a person with angina which I understand to be a reduction in the flow of blood to the heart, is a stress test which is physical more diagnostic to you or more apt to give you a good feeling as a doctor than the mental stress; could you comment on that for us?

A. Yes. Physical stress on a treadmill is probably the most commonly accepted way to do this and other ways of putting patients through stress probably wouldn't be too socially acceptable and that's about all I had available to me.

Q. Well, what I mean is—

A. He was under mental stress during my office visit, there is no question about that.

Q. Well, what I mean is a person with angina, you would ordinarily say don't get involved in wrestling matches or anything that has a great deal of physical activity as opposed to mental; can you make a — between those two which is more dangerous to the patient?

A. I can't answer that. I think some people may show up more problems with chest pain with mental stress and others may show more with physical stress. But they show it with both.

Let me add one other thing. If he has had unstable angina for this considerable period of time he has undergone considerable risk sitting at home.

JUSTICE ENGLAND: Senator McClain.

EXAMINATION

BY SENATOR McCLAIN:

Q. Doctor, I would like to get some of the terminology clarified. We have heard of myocardial infarction, cardiac arrest, are those synonymous terms?

A. No, sir. Myocardial infarction refers to the damage to the heart muscle generally caused by cessation or blockage of blood flow to the heart muscle. However, there is — technically myocardial infarction you can induce with a hammer, by that you could kill a heart muscle that way. But the usual is induced by relative lack of blood flow causing damage to that heart muscle. Cardiac arrest implies a cessation of cardiac function which does not have to accompany myocardial infarction but certainly is one of those complications we are most aware of and that's the thing we don't like to see in a patient who has a heart attack and that is probably the most likely the time that a patient does have a cardiac arrest.

There may be cardiac arrest without autopsy proof of infarction in those persons who die suddenly and they simply don't have time for their hearts to evolve those changes pathologically. They die before the pathologic changes occur that are diagnostic infarctions.

Q. Doctor, assuming that Dr. Crevasse is correct and in 1973 the Respondent did have a myocardial infarction and he does have unstable angina, the question I would like to pose to you is do you still believe, assuming that he is correct and you're wrong, that the Respondent could attend the trial of this case for a period of a week or so?

A. In 19—

Q. —without running an unreasonable risk of having myocardial infarction?

A. If he had this myocardial infarction and unstable angina in 1973 this would have very little influence upon my judgment currently. I would be more concerned about what his current status was.

Q. So to answer my question, he still could withstand the trial assuming Dr. Crevasse is correct and not having unreasonable risk of having a myocardial infarction, if that's what in fact he had before.

(Short pause.)

A. I can't answer that the way you want me to, sir. If I assume that everything that's been called unstable angina every time it's been called and I have been wrong in every instance, I would say that this would increase—if I was an outsider, have to pass judgment on the outside, I would say no, I don't feel as comfortable as I feel right now. All right.

Q. All right.

JUSTICE ENGLAND: Senator Ware.

EXAMINATION

BY SENATOR WARE:

Q. Doctor, the testimony we have heard indicates that angiogram is probably the best test to—

A. For what—

Q. To determine the present condition of Judge Smith's heart.

A. It's the best condition to determine the anatomy of Judge Smith's coronary vessels. It is not the best test to indicate what his functional status is. And to more completely answer your question, one can have major obstruction to a coronary vessel in two separate people that look very closely identical on the arteriogram. That simply shows where the vessel is blocked and roughly how badly it's blocked.

One patient may be clinically terribly unstable and the next patient may have absolutely no symptoms whatsoever. I think it's a picture of what the circulation looks like. It does not give you any idea of what symptoms he has nor what symptoms he would like to have had or any indication of his present level of risk or of function.

Q. Is there a risk involved in the procedure itself, though?

A. There is some risk involved.

Q. Doctor, the real question, final question I have is, you say that he can withstand the procedure with acceptable risk?

A. Yes, sir.

Q. Would you kindly tell us what your criteria is for determining what acceptable risk is?

A. Mr. Cacciatore has already asked me that but I think it's acceptable to me and that is the one — I'm the one that was asked to make that judgment. That may not be acceptable to Mr. Cacciatore. I don't think you will have trouble — he has coronary disease, I think, although I really haven't been asked to get into that problem. I'm not absolutely sure and things like that which I don't think are appropriate.

People with coronary disease are more likely to have problems than those without. You can have cardiac arrest with absolutely normal anatomic coronary and that's the reason why if I did a coronary arteriogram on you or any other person in here and it was absolutely normal and he had absolutely no symptoms and his cardiogram and stress test and every other test I got on him was absolutely normal, I could give him no guarantee. Risk is a relative thing and I just don't know any test that we're going to give that will give you a computerized statistical number that you're going to come out with. I think you have to either decide that I know what I'm talking about or something and you're going to have to decide that. I told you what my judgment was and it's my judgment.

If I felt like he was going to get into trouble, I would not have written that letter nor would I say he was an acceptable risk, believe me.

JUSTICE ENGLAND: I think Senator Vogt was on his feet first.

EXAMINATION

BY SENATOR VOGT:

Q. Doctor, I believe the concern of Drs. Landrum and Crevasse was the unstabilized pain condition.

A. Yes, sir.

Q. Assuming, and I guess the assumption is that is brought on by stress.

A. I don't think that is necessarily correct. That may be a factor.

Q. But I gathered an indication that's very harmful for him, presumably, to be in a stressful situation while he's having unstable — if he's having —

A. Is it harmful for him to be in a stressful situation?

Q. Possibly harmful.

A. Well, how do you — I think he has been through sitting stress and what I'm looking for is one objective evidence of the harm that's done to him. And I have looked and it's been very difficult for me to find objective data that all of this stress has done him any harm so far.

Q. Well, let me ask you this; if this body should grant a continuance of three months and we approach this same situation three months from now and the Judge approaches again a stressful situation, isn't it quite possible that he could complain of the same conditions and circumstance unless he were monitored regularly, hooked up to something, there would be no way of actually proving that it happened?

A. I frankly don't think he would be in a great different situation three months from now.

Q. Let me ask something, too: Can this, assuming this unstabilized situation can occur, can it be influenced by the eating or smoking habits or medication?

A. Yes, to some degree. Yes. And not always predictable but usually.

Q. Well, based on your analysis then would you have any reason to believe that he could withstand the stress sitting better three months from now than he could today?

A. I really don't think so. Because I think his coronary anatomy, if there is a problem there, I doubt that it's going to get a whole lot better.

JUSTICE ENGLAND: Senator Spicola.

EXAMINATION

BY SENATOR SPICOLA:

Q. Doctor, following up Senator Barron's earlier question to you relating to emotional and physical stress, can you think of an instance where you would advise someone or could advise someone with some form of heart disease that you would prescribe, say, some kind of physical exercise such as jogging but on the other hand you would have them avoid the job that they have because of the emotional stress or have them go on a vacation or something like that?

A. That depends on the individual patient. I find that most of my patients cannot afford the luxury of quitting despite risks. I think these patients — to try to tell them that if you go to work tomorrow that's going to be much more risk than if you sit at home worrying why you can't work. I think that you cannot make that statement. No, I don't very frequently tell people that you should quit work because of the presence of angina. It causes new problems when I see a guy who's digging ditches for a living and it's much easier to handle a guy who goes and sits down at a desk to allow him to stay at work.

JUSTICE ENGLAND: Any further questions of this witness? Being none then —

SENATOR BARRON: I just think we ought to get into the record that the thing I'm concerned about is, Doctor, you have assumed that the trial is a week and I'm the only one that's ever been in one of these things and I assume it's a very different set of circumstances. Is that significant to you or how about a month and a half?

THE WITNESS: I can't — if there is any evidence at which there is a change in the Judge's clinical condition, I would be the first one to say let's reassess. Okay. And his clinical condition in the absence of making any other moves here is not likely, in my opinion, to be appreciably better in three months. And unless there is a major change in his clinical condition, I would say that it probably doesn't make a lot of difference whether we are talking about a week or two weeks or three or what. I think I have advised him completely unrelated to this that I thought in the foreseeable future that he ought to have a coronary arteriogram because I think that — if I had to advise him which way to go, I would love to know exactly what I was dealing with. I can't foresee that the likelihood of a coronary arteriogram affecting the way I feel about this present risk.

In other works, if he has 50 or 75 or 85 percent lesion, to me, to try to get a level of function on these people, you might have to put them on a treadmill to find out just how significant that 85 percent lesion is. And so the doing of a treadmill — excuse me — doing a coronary arteriogram to try to reach a conclusion that I'm asked to reach would not help me at this point greatly.

JUSTICE ENGLAND: Senator Holloway.

EXAMINATION

BY SENATOR HOLLOWAY:

Q. Doctor, in your findings was it the determination that this man was suffering from high blood pressure?

A. No, sir.

Q. No?

A. He has had some mild high blood pressure in the past. It's been very easily controlled and it has never been a clinical problem.

Q. Was it indicated that it was probably functional? When I heard 185 — the 180 over 110, I assumed that this was something they called, you know, neo — this sort of thing where you know you get all excited, as I do, and you read 90 instead of 80 — is that what happens?

A. I don't know what you call it but when I was sitting in that isolation room out there I'm sure my blood pressure exceeded that.

His blood pressure in any of these records has never been a clinical problem. His blood pressure yesterday was 130 — two days ago was 130 over 80 or 95; that's not a big risk situation and I think it deserves no real consideration as far as risk is concerned.

Q. Also in these tests did you find any heart damage from previous heart attacks that this man has suffered?

A. No, sir. I tried to make that extremely clear earlier; there is not any good evidence for that.

Q. Is the man old enough to have hardening of the arteries?

A. Sir?

Q. Is this man old enough to have this problem of hardening of the arteries?

A. Certainly, yes.

Q. Beg your pardon?

A. Certainly.

Q. Did you find that?

A. No—

Q. Is the answer no?

A. By hardening of the arteries that—that's a general term that there really is not in medical terminology and it's used as a wastebasket term. I assume you're probably talking about his coronary arteries and this is what the total thing that we have been addressing ourselves about, the whole procedure. I think that he may indeed have significant, quote, hardening of his coronary arteries, okay, unquote. I found no evidence that he had any clinical problems with hardening of any of his other arteries.

But the coronary arteries are the things that we have been talking about the whole bit and I think that he may well have evidence of that. And just the degree of problems and risks that are involved with the coronary arteries are what this is all about.

Q. Thank you.

JUSTICE ENGLAND: I see no further questions, Dr. Wilson. You're excused.

DR. WILSON: Thank you.

JUSTICE ENGLAND: Senators, let me tell you where you are at this point. There is one more minor legal matter that will take about ten minutes. Counsel have asked for no more than five minutes each to address to you their arguments on the motion to continue and at that time we will take the will of the Senate with respect to the continuance. I commend you on your patience and attention to this point. It has been, in medical terms, remarkable.

Throughout the proceedings, and it came up at the committee meeting earlier today, there have been some overhanging legal questions, all of them have been deferred, they all arise out of—the relevant legal questions arise out of the motion for continuance.

In an early stage I was asked by the committee chairman to address these legal questions or to consider them and to report to the Senate. I am prepared to do that now and I am going to take about six or seven minutes of your time to read rather than to try and summarize because I want to be careful about this, the legal conclusions that I have drawn on the matters relating to the continuance. I think this is in accordance with the precedents of the Senate and other impeachment matters seeking the Chair's legal opinion. I will file the original of this memorandum with the Secretary of the Senate and it will be available just as soon as I have completed reading it.

IN THE MATTER OF THE :
IMPEACHMENT TRIAL OF THE :
HONORABLE SAMUEL S. SMITH, :
CIRCUIT JUDGE, THIRD :
JUDICIAL CIRCUIT :

On August 29 Respondent Samuel Smith filed a Motion for Continuance of Trial stating that, for medical reasons, he is unable to withstand the rigors of trial and requesting a three-month continuance. Such motion, if granted, would place the trial date beyond the six-month limit set out in Article III, Section 17(c), of the Florida Constitution. That provision states:

"The senate shall determine the time for the trial of any impeachment and may sit for the trial whether the house of representatives be in session or not. The time fixed for trial shall not be more than six months after the impeachment."[1]

Consideration of Respondent's motion requires a determination of whether the six-month time limit is mandatory, or whether it may be waived by either the impeached official or the Senate.

There is no clear precedent for either construction of the constitutional time limit. In comparing the provision to predecessor provisions in earlier constitutions, however, it appears that the six-month limit is mandatory. With only slight changes, the present provision is a carry-over from the Constitution of 1885.[2] The 1885 provision, however, reflected a major change in wording from the analogous provision in the Constitution of 1868. Article XVI, Section 9, of the Florida Constitution (1868), provided:

"Any officer, when impeached by the Assembly, shall be deemed under arrest, and shall be disqualified from performing any of the duties of his office until acquitted by the Senate. But any officer so impeached and in arrest may demand his trial by the Senate within one year from the date of his impeachment." (Emphasis added)

Clearly, the 1868 Constitution granted the impeached officer a right to demand that he be tried within one year. The use of the permissive term "may," however, indicates that such officer had the option of making the demand but was under no compulsion to do so. Because the one-year limitation was waivable, it became mandatory on the Senate only upon demand by the impeached official.

When the wording of related statutes and constitutional provisions is changed, it is presumed that a difference in meaning was intended. *In re Advisory Opinion to the Governor*, 112 So.2d 843, 847 (Fla. 1959); *Blount v. State*, 102 Fla. 1100, 1104, 138 So. 2, 3 (1931); *Mugge v. Warnell Lumber & Veneer Co.*, 58 Fla. 318, 321, 50 So. 645, 646 (1909).

Certainly, the directive in both the 1885 and 1968 Constitutions that the time of trial "shall not" be fixed for a date more than six months from the formal act of impeachment suggests a requirement more absolute than that embodied in the 1868 Constitution. The deletion of the permissive language that an official "may demand" a trial within one year and the substitution of the mandatory phrase in the later constitutions suggest that the invocation of the time limit is no longer within the impeached official's discretion. It suggests, rather, an absolute requirement, which automatically applies in all impeachment proceedings.

The reduction of the time limit from one year to six months suggests a possible purpose for the change to a mandatory time requirement. The time for setting trial in all three of the relevant constitutional provisions runs from the date of impeachment—that is, the date on which the articles of impeachment are presented to and accepted by the Senate. Consequently, the one-year limit in the 1868 Constitution would span the terms of two senates. In an election year, the membership of the Senate which first received the articles of impeachment from the House might differ greatly from the membership trying the impeachment.

Citing the 1870-71 impeachment trial of James T. Magbee as precedent, the Supreme Court indicated in an 1872 advisory opinion that the Senate when sitting for an impeachment trial is comparable to a court.[3] Just as the cases pending before a court would be assigned to a new judge if the judge before whom they were first presented vacated his office, articles of impeachment presented to the senators during one session would be acted on by senators constituting the Senate at its next session—including new senators who had previously not been involved with the impeachment.[4] New senators would have to be sworn and apprised of any prior actions taken in the proceeding.

A six-month time limit, however, would ordinarily require that the trial be held prior to the next general election,[5] with the membership of the Senate remaining unchanged throughout the impeachment proceedings.

Compliance with the six-month limit would also prevent the expiration of the impeached officer's term of office prior to the resolution of his impeachment trial, in the usual case. Since the impeachment provisions in both the 1885 Constitution and the 1968 revision refer to the conviction of "officers" by the Senate, it is problematic whether impeachment proceedings would continue to have validity once an impeached officer's term of office expired. A desire to ensure the efficiency and integrity of impeachment proceedings, therefore, could well have motivated the reduction in the time for trial from one year to six months.

Weighing the interests of the impeached officer in a speedy resolution of his status against the needs and objectives of the government officials who must participate in the trial and the people of the state in whose interest the proceedings are conducted, it can fairly be argued that the balance should rest with a mandatory application of the time limit.

Finally, the plain language of the present provision supports the conclusion that the six-month time limit is mandatory, subject to waiver by neither the impeached official nor the Senate. The sentence preceding the six-month requirement states that "[t]he Senate shall determine the time for the trial," inferring that the time of trial is completely within the discretion of the Senate. The sentence immediately following, however, delimits that discretion to a time frame which "shall not be more than six months after the impeachment." It would be anomalous to construe the constitutional terminology in a way which, on the one hand, limits the Senate's discretion to a period of six months and, on the other hand, confers unlimited discretion on the impeached officer to forestall the commencement of the cause.

Consequently, I conclude that the six-month time limit established in Article III, Section 17(c), Florida Constitution, is mandatory, and is neither subject to waiver by the Senate nor the impeached official.

That determination is not the end of the matter, however. Even if it is determined that Judge Smith's present health precludes his attendance at a trial at this time, however, it does not follow that his motion for a continuance must be granted. Precedent exists for an impeachment trial in the absence of the impeached official. Admittedly, these precedents are quite old (1803 and 1862)[6] and notions of constitutional "due process" may have changed in the intervening years. Three factors support the continued viability of these precedents, however.

(1) Impeachment is a rare and a unique proceeding which, although possessed of due process attributes, has not necessarily undergone the same developments commonly associated with evolving criminal jurisprudence. See Justice Terrell's discussion of the English origins of this process in his brief found in your May 26, 1978, desk books.

(2) Rule 29 of the Senate Impeachment Rules provides that non-conflicting Florida Rules of Criminal Procedures are applicable to this impeachment proceeding, "provided, however, that nothing in such rules shall delay or prevent the trial by the Senate sitting as a Court of Impeachment." Even beyond this directive for a prompt trial, Rule 3.180 of the Florida Rules of Criminal Procedure provides that "[i]f the Defendant is present at the beginning of the trial and shall thereafter, during the progress of said trial . . . voluntarily absent himself from the presence of the court without leave of court . . . the trial of the cause or the return of the verdict of the jury in the case shall not thereby be postponed or delayed; but the trial . . . and the return of the verdict thereon shall proceed in all respects as though the Defendant were present in court at all times."

In *Platt v. State*, 291, So.2d 96 (Fla. 2d DCA (1974), *cert. dismissed*, 313 So.2d 715 (Fla. 1975), the court held that where a defendant who has notice of the proceedings deliberately absents himself, he cannot later challenge his conviction on the basis that the trial was conducted in his absence.

(3) Rule 8 of the Senate Impeachment Rules provides "If the impeached officer after service, fails to . . . appear as may be directed in the summons, the trial shall proceed, nevertheless, . . ."

Respondent was duly served with summons and has "appeared," having been present on May 26th, 1978, during the Senate's consideration of his motion to dismiss.

From the foregoing, I conclude that, if Judge Smith should in fact voluntarily absent himself from the impeachment trial for health or other reasons, the Senate may proceed in his absence to try the charges against him in the Articles of Impeachment presented by the House.

Dated: September 13, 1978

[1] Impeachment is the presentation of the articles of impeachment by the House of Representatives to the Senate and the Senate's acceptance of them. In the Matter of the Executive Communication of November 9, 1868, 12 Fla. 653, 674-78 (1868). Samuel Smith was impeached on April 18, 1978.

[2] Article III, § 29, Fla. Const. (1885), provided that "the time fixed for such trial shall not be more than six (6) months from the time articles of impeachment shall be preferred by the House of Representatives."

[3] In the Matter of the Executive Communication Filed on April 17, 1872, 14 Fla. 289, 297-99 (1872). This opinion was delivered in response to an inquiry by Governor Harrison Reed regarding the effect of the adjournment of the Senate until the next regular session without final resolution of impeachment proceedings of Reed.

[4] *Id.* at 298-99.

[5] Like Article VI, 5, of the present constitution, Article IV, § 3, Fla. Const. (1868), and Article III, § 3, Fla. Const. (1885), require that general elections be held on the first Tuesday after the first Monday in November.

[6] *See* 3 *Hinds' Precedents of the House of Representatives*, §§ 2332-37, 2394 (1907), discussing the 1803 impeachment of federal judge John Pickering and the 1862 impeachment of federal judge West H. Humphreys.

JUSTICE ENGLAND: At this time, Mr. Cacciatore, you have five minutes to make your argument to the Senate on your motion for continuance. You may want to take that microphone.

THE SECRETARY: He wants to use the well.

JUSTICE ENGLAND: All right.

MR. CACCIATORE: Thank you, Mr. Chief Justice. Members of the Florida Senate, I feel somewhat uncomfortable appearing before you in these proceedings. I never have been honored with being a member of the Legislature, I have not been one of those lawyers who have been up before you lobbying. So basically I'm a person appearing before you who many of you don't know, many of you have never seen before.

I'm concerned because the speaker that will be following me is a very able, very dedicated Legislator whom you all know, Billy Joe Rish. I'm just hopeful that your lack of knowledge of this speaker will not dissuade you in the decision that you're about to make.

We have founded, we have presented the evidence on our motion for continuance. Attached to the motion for continuance are two affidavits and medical records. You have heard the testimony of Dr. Landrum, you have the testimony of Dr. Wilson. Unfortunately through no fault of the Respondent Dr. Crevasse could not be here. We did the next best thing and furnished this body with a copy of the transcript of his deposition.

There is no doubt in my mind from my limited research on the issue of whether or not a person has to be present that the Chief Justice is absolutely correct. That this body can go forward if that person is not present.

Consider with me, if you will, however, the dilemma in which you place Sam Smith, the Hobson's choice that he will be given if you fail to grant the motion for continuance. On the one hand he has received medical advice from two doctors who have treated him, known him for a number of years. One of these doctors is his family physician. The other is a well respected board certified in two fields, a physician who is also a professor at Shands, at the University of Florida. A cardiologist who has published many, many times.

On the one hand we have Dr. Wilson who has seen the Respondent on one day out of his total of 55 years and in the two hours and fifteen minutes of his examination out of this whole man's life he concludes that this man can proceed.

As opposed to that you have Dr. Landrum who admittedly is not a cardiologist but one who is learned in the practice in this area because, quite frankly, there are no cardiologists in Lake City. Linked together with a man who has not been challenged as being an expert. So what we are down to is you're indicating to Judge Smith just ignore the advice of your physician and show up possibly to your detriment or on the other hand don't show up, not be able to assist counsel and let the proceeding go on. I respectfully submit to you, gentlemen, that you grant the motion for continuance. Thank you.

JUSTICE ENGLAND: Mr. Rish.

REPRESENTATIVE RISH: Mr. Chief Justice, if it please the Court, Members of the Senate. We were assigned the unsavory task of presenting this case to you in the best possible way that we could. It's never a pleasant thing for you or for Mr. Cacciatore or for our team to have to get into this sort of a predicament or situation. There're a lot of you that would rather be somewhere else today. Let me assure you that I would rather be somewhere else today. But we have moved in the constraints of time that we were in with the Legislature and with the other problems that Sam Smith had as rapidly as we could, keeping in mind his own best interest.

We have cooperated with Mr. Cacciatore and he has cooperated with us in every way possible to expedite this, yet be kind and generous and loving to everybody concerned.

But today is the time for us to make a decision. We either impeach this man or we forget it and go home and see if some future Legislature wants to look at it.

Now we have done all that we know how to do in being fair and I can assure you that I never saw Dr. Wilson before yesterday in my life that I remember. He wasn't handpicked except from a list of the most eminent cardiologists in this area. He examined this man and if his sincerity didn't show through to you then you have missed something that I perceived when I met him and interviewed him.

I never saw a man who took a hold of something without discussing the fees involved or being concerned about these but as a public service and whatever minimal fee was involved went to looking at the records of all of the doctors and all of the hospitals that this man has been concerned with and he said to you and to me I can't understand some of the diagnoses that have gone ahead of it but I personally think that he is able to go forward with these proceedings.

And now I would just add to that that the diagnosis that you have heard relayed by the doctor who was here, the family doctor, who plays golf with him, has known him for 20 years and goodness knows I hope my doctor would testify the same way if he were called to a similar situation, but all of this stuff that we have heard from that doctor and from the others indicating a seriousness of that would cause him some problem at this trial have been from subjective symptoms and not from objective symptoms.

Dr. Wilson was so concerned that he testified that he went out and discussed it on his own with three other cardiologists in Tallahassee.

What has he got to gain? That man has put his neck out on the limb. What's a doctor of eminence in the community of which he practices, he has got no ax to grind with anybody. In fact you might wonder and I might at first blush to say, well, by George if I had been he I would have just gone the other way rather than take any chances. But he commented to us when we interviewed him that it would have been a lot easier for everybody if he would have just flunked his test. But he didn't, that's the way he saw it. And under the medical data and the testimony that you have and we have we submitted to you that to grant a continuance is not proper under the circumstances.

God hope that we all made the right decision.

JUSTICE ENGLAND: The Chair will recognize Senator Vogt.

SENATOR VOGT: Could I ask a question of the Chief Justice?

JUSTICE ENGLAND: Sure. Yes.

SENATOR VOGT: Based on your interpretation of the ability of any group to—the ability of the Senate or the inability of the Senate to set a trial date for after six months based on Mr. Rish's comments that if a continuance is granted then it would be beyond the ability of this Legislature to continue the impeachment. Then I have the conclusion then that if the

Senate should grant a three month continuance then the time for trial of six months would have expired at that time and the impeachment charges would have to be pursued again through the House of Representatives at some subsequent time if they so desired.

JUSTICE ENGLAND: Senator, that would be my interpretation of the matter, subject only to the fact that the Senate could come back even though they had adjourned today for three months, somewhere between now and October 18th and revitalize this procedure. But if the Senate does not act on this, if it does not commence the trial within the six month deadline—the six month deadline ends on October 18th. Yes. That is correct.

SENATOR VOGT: You said if the Senate today decided to grant a three month continuance but then came back — for what purpose might we come back before October the 18th?

JUSTICE ENGLAND: I can't predict that.

SENATOR VOGT: But conceivably they could initiate some activity which—

JUSTICE ENGLAND: If the Senate adjourns for three months and did not do anything more, then the answer to your question is I consider these charges against Judge Smith to have abated.

The Chair recognizes Senator Hair.

SENATOR HAIR: Mr. Chief Justice, at this time I would like to make a motion. The motion is that we do now deny the Respondent's motion for continuance. And may I have a moment to explain my motion?

JUSTICE ENGLAND: Proceed.

SENATOR HAIR: Senators, the reason I make the motion, first of all, we are in a predicament. And I know that Mr. Cacciatore has indicated that Judge Smith is in a predicament, too. But I do think that, first of all, we have a jurisdictional problem. If we do not try Judge Smith within a period of six months we are going to lose jurisdiction. I think there is competent medical testimony from an independent physician who in my opinion is completely unbiased who has testified that in his opinion the judge can withstand the stress of these proceedings.

I would like to advise the Senate that we do have on standby, people who are present here today, EMT people who will be available during the trial for Judge Smith's purposes. And we also will have a doctor available for him during all of these proceedings which are being provided by the Florida Medical Association. Even if he chooses not to go to trial with the doctor and the EMT people here, I also would like to point out that under our rules he does not have to be present during the trial. And in my opinion all of those justify the denial of the motion for continuance.

JUSTICE ENGLAND: Is there further discussion on the motion? I would remind you that under the rules you have adopted, Rule 23, debate or discussion on all matters other than the final impeachment vote taken is limited to five minutes.

SENATOR BRANTLEY: Would the Chair be kind enough to phrase that question properly because the Defense Counsel has asked for continuance. The House Managers have argued a denial. The motion by Senator Hair was that we do now deny the motion of which tends to be confusing. Would the Chair state the motion direct, please?

JUSTICE ENGLAND: Senator Hair, would you like to clarify that?

SENATOR HAIR: Yes. I think since the motion is pending before us, the motion is that the trial be continued. I guess since the motion is pending, my argument then is that we just deny that motion. And I was speaking against the motion. So I think that needs to be clarified when we take the vote. We either vote for the motions by yea vote or vote no.

JUSTICE ENGLAND: Senators, perhaps I can clarify that for you. And I will before we vote again. Because of the unique nature of these proceedings, the motion was filed with me as presiding officer in your absence. I did not rule on it. It was passed to the Committee. The Committee did not rule on it. So we really have the motion by Mr. Cacciatore pending before you, which is the motion to continue. And as I understand Senator Hair's motion, it is that that motion be denied. Ordinarily, it would require a motion of a Senator rather than Counsel, for any action by the Senate.

SENATOR BRANTLEY: Would it not serve the same purpose if the Chief Justice as presiding officer of this impeachment proceeding simply make a ruling. And then if someone disagrees with that ruling, he would ask a vote be taken of the Senate which would only require a majority vote?

JUSTICE ENGLAND: I think you would end up in the same position, having to decide whether to overrule the presiding officer or not, which is the reason everybody brought it to you. We're not in a serious procedural morass, Senators. I think it does require a motion by a Senator in order for action of the Senate and, therefore, I would accept Senator Hair's motion that the motion to continue be denied. Any discussion on the motion?

SENATOR PAT THOMAS: If we agree with Senator Hair, we vote yes?

JUSTICE ENGLAND: Seeing no hands for discussion, we will vote and I will explain it this way, if it comes out right. If you vote yes, you are voting to go to trial and to deny the request for a continuance. Will all Senators prepare to vote? The secretary will unlock the machine. Have the Senators voted?

(No response.)

JUSTICE ENGLAND: The secretary will lock the machine and tally the vote.

Yeas—36

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

Nays—None

JUSTICE ENGLAND: The motion to deny the continuance has been approved and a continuance is not granted.

Senators, there were two other procedural matters prior to the calling of witnesses. One is an informal discussion which needs to be brought to your attention regarding the President's setting of the times and days for your proceeding. Senator Hair, did you wish to address that subject?

SENATOR HAIR: Mr. Chief Justice, we discussed the times and so forth for the trial but we decided that we would — before we made a recommendation from the Committee that we would wait to see how the trial proceeds. So I have no recommendation at this time.

JUSTICE ENGLAND: In that case, unless somebody proves to the contrary, we're operating under your President's directive that we begin tomorrow at 9:00 o'clock, an hour break for lunch, and continue until 5:00 o'clock. Senator Thomas?

SENATOR PAT THOMAS: I just want to make an announcement when you get finished.

JUSTICE ENGLAND: There is one other matter procedurally. Tomorrow's proceedings will begin with a motion by the Respondent which is a renewal of an earlier motion which you heard argued on May 26th to dismiss the proceedings. Counsel have agreed to limit their time to 20 minutes a side to re-raise that question for your consideration. That will be followed by opening arguments as provided in the rules and then the presentation of testimony in the event the motion to dismiss the entire proceeding is not approved. Senator McClain?

SENATOR McCLAIN: Mr. Chief Justice, some of us who are practicing law and others wonder if tomorrow we could have some idea how long we will be here. Maybe counsel for both sides could get together, sort of give us some idea, are we going to be here a week, two weeks. Most of the time the judges want to know how long the trial is going to take. Since we have got to be the judge and the jury, I guess we would like to know the same thing.

JUSTICE ENGLAND: I have already made a request of Counsel that by tomorrow morning to the extent possible they submit not only a list of the witnesses they intend to call, but the approximate times and their estimate, which we understand, if possible to make at all, will be very rough. Any other matters? Senator Wilson?

SENATOR WILSON: Inquiry. I believe I understood you, Mr. Chief Justice, you announced the times for Senate trial tomorrow. But I have before me a memorandum dated August 29th which suggests that we would consider setting the daily trial schedule in which days. When would we consider that as to whether the trial would continue like right through the weekend if necessary or whether it would adjourn on Monday. Will that issue be before us at some point?

JUSTICE ENGLAND: Yes. As I understand the sense of what Senator Hair said, that is a matter which probably will be brought up tomorrow on anybody's request.

(Whereupon, an off-the-record discussion was had.)

SENATOR GALLEN: Mr. Chief Justice, did I understand you to say that the motion to dismiss the impeachment information which you have already ruled on would be argued again before the Senate so the Senate can vote on it?

JUSTICE ENGLAND: There will be a consolidated motion tomorrow morning. One is to overrule my ruling, which is in your desk book, that Article I should not be dismissed. The motion was made—

SENATOR GALLEN: Under Rule 17, once you have made a ruling, wouldn't that require a member of the Senate to make a motion that your ruling be overruled in that it is not within the purview of the Respondent's Counsel to seek an overturn of your ruling?

JUSTICE ENGLAND: Absolutely, except this is a consolidated motion. The other aspect of it is a renewal of a motion to dismiss the entire proceedings based on the motion, written motion filed in your first desk book, which I understand the House Managers have agreed should be brought up, can be brought up and would be argued tomorrow morning.

SENATOR GALLEN: Mr. Chief Justice, I just raise this because I think all of us are anxious to get on with the proceedings and not be unduly delayed by repetitious rulings and arguments. Unless some member of the Senate were to challenge your order in that, I would think that it would be better practice for us to proceed with the problem.

JUSTICE ENGLAND: I think you are quite right procedurally. In the morning I will start by asking if any Senator will accept that position to raise. Do I hear a motion to adjourn until 9:00 o'clock tomorrow morning?

SENATOR HAIR: I make a motion.

JUSTICE ENGLAND: All in favor say Aye.

THE SENATE: Aye.

CORRECTION AND APPROVAL OF JOURNAL

The Journal of May 26 was corrected and approved.

The Journal of May 12 was further corrected and approved as follows: Page 6, column 1, between lines 21 and 22 insert:

Writ of summons, notice of hearing dated April 21, 1978, attested copy of the Rules of Practice and Procedure of the Florida Senate when sitting in the Trial of Impeachment, precept, and an attested copy of HR 1560(1978) on the 21st day of April, 1978, were issued and service thereof made upon the Honorable Samuel S. Smith, Circuit Court Judge of the Third Judicial Circuit of Florida, by the Sergeant At Arms of the Senate on the 24th day of April, 1978, by delivering a true and attested copy thereof upon Samuel S. Smith in New Orleans Parish, Louisiana.

The Senate, sitting as a Court of Impeachment, adjourned at 5:52 p. m. until 9:00 a. m., Thursday, September 14, 1978.

Journal of the Senate

Number 5 **September 14, 1978**

SITTING AS COURT OF IMPEACHMENT

The Senate, sitting as a court for the trial of Articles of Impeachment against the Honorable Samuel S. Smith, Circuit Court Judge of the Third Judicial Circuit of the State of Florida, convened at 9:00 a.m.

The Chief Justice presiding

The Managers on the part of the House of Representatives, Honorable William J. Rish, Honorable H. Lee Moffitt and Honorable Ronald R. Richmond, and their counsel, Honorable Marc H. Glick, were present at the Managers' table.

Counsel for the Respondent, Honorable Ronald K. Cacciatore and Honorable Robert H. Nutter, were present at the Respondent's table.

A quorum present—36:

Barron	Gordon	McClain	Spicola
Brantley	Gorman	Myers	Thomas, Jon
Chamberlin	Graham	Peterson	Thomas, Pat
Childers, Don	Hair	Plante	Tobiassen
Childers, W. D.	Henderson	Poston	Trask
Dunn	Holloway	Renick	Vogt
Firestone	Johnston	Scarborough	Ware
Gallen	Lewis	Scott	Williamson
Glisson	MacKay	Skinner	Wilson

Prayer by Senator Lewis:

Our Heavenly Father, as we contemplate the deliberations today, probably the singular most serious thing that we do here at any time, send Your holy spirit to lead us to help us make our decisions not based on what may be popular but what is the right thing to do. Please give us Thy strength to carry out Your will. Amen.

JUSTICE ENGLAND: In the absence of any objection, we will dispense with the reading of the journal of yesterday. Are there any corrections to the journal? Show that there are no corrections for the record.

I would like to note for the record the presence of the Board of Managers, Messrs. Rish, Moffitt and Richmond and Counsel for the Respondent, Mr. Cacciatore and Mr. Bob Nutter.

Senators, I would like to call your attention to Rule 28 adopted for these proceedings in light of the number of questions which have come up in the last day or two. That rule provides that Senators may be excused from further duty in these proceedings in the case of emergency. And having been excused, the member shall not participate further in the proceedings. There are a number of reasons why people may need to be away. If they're in the emergency category, under the rules you have adopted, that will preclude further participation in these proceedings.

Obviously, the sense of that is that you act very much as a jury and if the jury or a juror is absent during part of the deliberations and misses some of the testimony, he cannot participate fully in the deliberations having only part of the information available. So I urge you to seek absences or recusals, if you must, with the greatest caution so that you can fully participate in these proceedings.

SENATOR BRANTLEY: Mr. Chief Justice?

JUSTICE ENGLAND: Senator Brantley.

SENATOR BRANTLEY: On that rule, would it be the feeling of the Chief Justice that if a member, for instance, had to be excused for an hour or perhaps longer but less than the duration of argument, either pro or con on either side, then he is automatically excused from the entirety of the session?

JUSTICE ENGLAND: No, Mr. President, I think that would not be the kind of excuse we are talking about. I would hope an hour, no one would be gone for that long. Obviously there will be occasions when one or more of you have to leave the chamber temporarily. But I would consider that to be a very short period of time to take care of some emergency and then return without necessity for having to advise me otherwise. But for any extended period I would certainly like to know about and then we will consider whether that is in this category or not.

SENATOR BRANTLEY: I had in mind more specifically the situation of one Senator that has already chatted with you and the possibility that he may have to visit a doctor, contemplating perhaps an hour, at the most a couple of hours to visit the doctor; would that then exclude him from further participation?

JUSTICE ENGLAND: I'm going to hold the answer to that. Probably not, but I have asked this Senator and others who have asked similar questions to please try and schedule as much of their absences as possible around recesses, lunch breaks and the break at the end of the day. I think most of those problems that you will have can be accommodated around those breaks.

JUSTICE ENGLAND: Senator Barron?

SENATOR BARRON: On that point, is it the position of the Court that when we're back in the Senate lounge, if we have to step back there for a moment, you can still hear testimony within the chambers.

JUSTICE ENGLAND: That's precisely why I don't consider that to be an excuse. The monitors are on in the back in the areas immediately surrounding the chambers for those kinds of absences. But I would urge you not to congregate back there or to go back there unless absolutely necessary.

There is, as in every trial, a great deal that can be gained by watching the witnesses. It's not enough simply to listen. And that applies for here.

Senators, this proceeding is in legal parlance "at issue" by reason of the respondent having filed a plea of not guilty.